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(c) "Meeting" means the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. Meeting does not include any on-site inspection of any project or program.

(d) Nothing in this section shall be construed as to require a chance meeting of two (2) or more members of a public body to be considered a public meeting. No such chance meetings, informal assemblages, or electronic communication shall be used to decide or deliberate public business in circumvention of the spirit or requirements of this part. [Acts 1974 (Adj. S.), ch. 442, § 2; 1979, ch. 411, §§ 1, 2; T.C.A., § 8-44-2; Acts 1985, ch. 290, § 1, 2; 1986, ch. 594, § 1.]

Compiler's Notes. The application of this act to certain attorney-client discussions has been held to be unconstitutional. See Notes to Decisions, 1. Constitutionality, Smith County Educ. Ass'n v. Anderson, 676 S.W.2d 328 (Tenn. 1984).

Amendments. The 1985 amendment added (b)(2) as it existed prior to the 1986 amendment. See the 1986 amendment note.

The 1986 amendment in (b)(2) added "of the board of directors of such nonprofit corporations" in the second sentence.

Effective Dates. Acts 1985, ch. 290, § 3. July 1, 1985.

Acts 1986, ch. 594, § 2. March 24, 1986.

Cross-References. Attendance at meetings by commission on aging, § 4-3-123.

Closed meetings of patient qualifications review board authorized, § 68-52-105.

Elk regional resource authority meetings, § 64-5-104.

Section to Section References. This section is referred to in § 4-3-123.

Attorney General Opinions. Informal discussion among city councilmen, OAG 83-033 (1/24/83).

County hospital committee, OAG 83-039 (1/28/83).

Cited: Curve Elementary School Parent & Teacher's Organization v. Lauderdale County School Bd., 608 S.W.2d 855 (Tenn. Ct. App. 1980).

NOTES TO DECISIONS

ANALYSIS

1. Constitutionality.
2a. Construction with other provisions.
4. Attorney-client conferences.

1. Constitutionality.

The application of the Open Meetings Act to discussions between public bodies and their attorneys regarding pending litigation violates Tenn. Const., art. II, §§ 1, 2. Smith County Educ. Ass'n v. Anderson, 676 S.W.2d 328 (Tenn. 1984).

2a. Construction with Other Provisions.

The Code of Professional Responsibility as promulgated by the Tennessee Supreme Court is not in material conflict with the provisions of the Tennessee Open Meetings Act; the effect of the Open Meetings Act is the public body, through the legislature, has waived the attorney-client privilege in all meetings within the meaning of the act. Van Kirk v. Board of Mayor & Aldermen, 668 S.W.2d 299 (Tenn. Ct. App. 1983).

When discussions between a public body and its attorney are held in private for purposes other than discussing pending litigation, the attorney may violate DR 7-102 (A)(7) and (8) of the Code of Professional Responsibility. Smith County Educ. Ass'n v. Anderson, 676 S.W.2d 328 (Tenn. 1984).

4. Attorney-Client Conferences.

Conferences between a public body and its attorney are neither constitutionally nor statutorily exempted from the provisions of the Tennessee Open Meetings Act (§ 8-44-101 et seq.). Van Kirk v. Board of Mayor & Aldermen, 668 S.W.2d 299 (Tenn. Ct. App. 1983).

Discussions between a public body and its attorney concerning pending litigation are not subject to the Open Meetings Act. Smith County Educ. Ass'n v. Anderson, 676 S.W.2d 328 (Tenn. 1984).

The holding that discussions between a public body and its attorney concerning pending litigation are not subject to the Open Meetings Act is a narrow exception, and applies only when the public body is a named party in the lawsuit. Smith County Educ. Ass'n v. Anderson 676 S.W.2d 328 (Tenn. 1984).

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8-44-103. Notice of public meetings.

Attorney General Opinions. Adequacy of public notice, OAG 83-119 (3/21/83).

8-44-104. Minutes recorded and open to public — Secret votes prohibited. — (a) The minutes of a meeting of any such governmental body shall be promptly and fully recorded, shall be open to public inspection, and shall include but not be limited to a record of persons present, all motions, proposals and resolutions offered, the results of any votes taken, and a record of individual votes in event of roll call.

(b) All votes of any such governmental body shall be by public vote or public ballot or public roll call. No secret votes, or secret ballots, or secret roll calls shall be allowed. As used in this chapter, "public vote" shall mean a vote in which the "aye" faction vocally expresses its will in unison and in which the "nay" faction, subsequently, vocally expresses its will in unison. [Acts 1974 (Adj. S.), ch. 442, § 4; T.C.A., § 8-4404; Acts 1980 (Adj. S.), ch. 800, § 1.]

Cross-References. Confidentiality of proceedings under hazardous chemical right to know law, § 50-3-2013.

Law Reviews. A Review of Contested Case Provisions of the Tennessee Uniform Administrative Procedures Act (William P. Kratzke), 13 Mem. St. U.L. Rev. 551 (1984).

The Pre-Hearing Stage of Contested Cases under the Tennessee Uniform Administrative Procedures Act (L. Harold Levinson), 13 Mem. St. U.L. Rev. 465 (1984).

8-44-105. Action nullified — Exception.

Law Reviews. A Review of Contested Case Provisions of the Tennessee Uniform Administrative Procedures Act (William P. Kratzke), 13 Mem. St. U.L. Rev. 551 (1984).

Cited: Curve Elementary School Parent & Teacher's Organization v. Lauderdale County School Bd., 608 S.W.2d 855 (Tenn. Ct. App. 1980); Smith County Educ. Ass'n v. Anderson, 676 S.W.2d 328 (Tenn. 1984).

8-44-106. Enforcement — Jurisdiction.

Attorney General Opinions. Applicability to committees of general assembly, OAG 83-072 (2/23/83).

Cited: Smith County Educ. Ass'n v. Anderson, 676 S.W.2d 328 (Tenn. 1984).

NOTES TO DECISIONS

ANALYSIS

1. Right to sue.
2. Standing.

1. Right to Sue.

Where lawsuit was brought under the provisions of the Public Meetings Act and the relief sought was as allowed by that statute, the plaintiff's right to sue was determined under the provisions of that enactment, and the court treated averment of complaint that lawsuit was brought under the provisions of the Declaratory Judgments Act as mere surplusage, so that the definition of who may sue under that statute had no bearing. Curve Elementary School Parent & Teacher's Organization v. Lauderdale County School Bd., 608 S.W.2d 855 (Tenn. Ct. App. 1980).

2. Standing.

Based upon allegations of complaint as considered on motion to dismiss for lack of a claim upon which relief can be granted, parent and teacher association had standing to sue in its own name under this section, although defendant school board could during the process of the hearing disprove essential allegations and

prove lack of standing. Curve Elementary School Parent & Teacher's Organization v. Lauderdale County School Bd., 608 S.W.2d 855 (Tenn. Ct. App. 1980).

8-44-107. Board of directors of performing arts center management corporation. — The board of directors of the Tennessee performing arts center management corporation shall be subject to, and shall in all respects comply with, all of the provisions made applicable to governing bodies by this chapter. [Acts 1981, ch. 375, § 1.]

Part 2—Labor Negotiations

8-44-201. Labor negotiations between public employee union and state or local government.

Law Reviews. Regulation of Collective Bargaining in Public Employment in Tennessee: The Education Professional Negotiations Act (Patrick Hardin), 47 Tenn. L. Rev. 241.

Remedies other than the Tennessee Uniform Administrative Procedures Act "Contested Case" Approach to Dealing with State and Local Governmental Action (John Beasley), 13 Mem. St. U.L. Rev. 619 (1984).

CHAPTER 46

IMPEACHMENT

Part 1—General Provisions

8-46-101. Officers liable — Effect of judgment.

Cross-References. Non-specified civil officers may be proceeded against by indictment for misbehavior in office, Tenn. Const., art. 5, § 5.

Power of governor to pardon does not extend to impeachment, Tenn. Const., art. 3, § 6.

8-46-102. Majority of house required.

Cross-References. House of representatives to have sole power of impeachment, Tenn. Const., art. 5, § 1.

8-46-103. Contents of impeachment — Right to counsel.

Cross-References. Impeachments to be prosecuted by members of house of representatives, Tenn. Const., art. 5, § 3.

8-46-105. Jurisdiction of trial.

Cross-References. Judgment, penalty, and relief in impeachment, Tenn. Const., art. 5, § 4.

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prove lack of standing. Curve Elementary School Parent & Teacher's Organization v. Lauderdale County School Bd., 608 S.W.2d 855 (Tenn. Ct. App. 1980).

8-44-107. Board of directors of performing arts center management corporation. — The board of directors of the Tennessee performing arts center management corporation shall be subject to, and shall in all respects comply with, all of the provisions made applicable to governing bodies by this chapter. [Acts 1981, ch. 375, § 1.]

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8-44-201. Labor negotiations between public employee union and state or local government.

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8-46-103. Contents of impeachment — Right to counsel.

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8-46-105. Jurisdiction of trial.

Cross-References. Judgment, penalty, and relief in impeachment, Tenn. Const., art. 5, § 4.

Reviser's Note: This section was also amended by 1985 c 44 § 8 without cognizance of the repeal thereof.

42.28.080. Repealed by Laws 1973, 1st Ex.Sess., ch. 84, § 1

42.28.090. Fees of notary—Collection of fees by public officers

Notaries public may make but not exceed the following charges for their services:

Protest of a bill of exchange or promissory note, three dollars;

Attesting any instrument of writing with or without stamp, three dollars;

Taking acknowledgment, two persons, with stamp, three dollars;

Taking acknowledgment, each person over two, two dollars;

Certifying affidavit, with or without stamp, three dollars;

Registering protest of bill of exchange or promissory note for nonacceptance or nonpayment, two dollars;

Being present at demand, tender, or deposit, and noting the same, besides mileage at the rate of twenty-five cents per mile, two dollars;

Noting a bill of exchange or promissory note, for nonacceptance or nonpayment, two dollars.

All public officers who are paid a salary in lieu of fees shall collect the prescribed fees for the use of the state or county as the case may be.

Amended by Laws 1975, 1st Ex.Sess., ch. 85, § 4; Laws 1983, ch. 214, § 1; Laws 1985, ch. 44, § 9.

Repeal

This section was repealed by Laws 1985, ch. 156, § 26, eff. Jan. 1, 1986, without cognizance of its amendment by Laws 1985, ch. 44, § 9.

Reviser's Note: This section was also amended by 1985 c 44 § 9 without cognizance of the repeal thereof.

42.28.100 to 42.28.130. Repealed by Laws 1985, ch. 156, § 26, eff. Jan. 1, 1986

CHAPTER 42.30—OPEN PUBLIC MEETINGS ACT

Sec.

Cross References

Criminal justice training commission, rules and regulations to be adopted and administered pursuant to this chapter, see § 43.101.080.

Operating agency contracts, required findings in an open public meeting under this chapter, see § 43.52.505.

Law Review Commentaries

Impact of oper. meeting laws. Michael C. McClintock, 15 Gonzaga L.Rev. 65 (1980).

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.30—OPEN PUBLIC MEETINGS ACT

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Impact of open meeting laws. Michael C. McClintock, 15 Gonzaga L.Rev. 65 (1980).

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42.30.010. Legislative declaration

Notes of Decisions

Chapter 42.32 (see, now, this chapter) was applicable to action of review board provided for by § 35.13.171 in determining desirability of proposed annexation; hence review board was required to give public notice of its meetings and to provide open hearings concerning proposed annexation. Meek v. Thurston County (1962) 60 Wash.2d 461, 374 P.2d 558.

An allegation that officers conducted closed, secret meetings in violation of this chapter, the open meetings statute, implicitly alleges knowingly wrongful conduct. Bocek v. Bayley (1973) 81 Wash.2d 831, 505 P.2d 814.

The purpose of the open public meetings act (this chapter) is to permit the public to observe all steps in the making of governmental decisions. Cathcart v. Andersen (1975) 85 Wash.2d 102, 530 P.2d 313.

Alleged violation of the Open Public Meetings Act (ch. 42.30) by the school board and retention of an incompetent superintendent was insufficient, without more, to establish such misfeasance, malfeasance, or a violation of the oath of office as would justify filing of a recall petition. Cole v. Webster (1984) 103 Wash.2d 280, 692 P.2d 799.

42.30.020. Definitions

As used in this chapter unless the context indicates otherwise:

(1) "Public agency" means:

(a) Any state board, commission, committee, department, educational institution, or other state agency which is created by or pursuant to statute, other than courts and the legislature;

(b) Any county, city, school district, special purpose district, or other municipal corporation or political subdivision of the state of Washington;

(c) Any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act, including but not limited to planning commissions, library or park boards, commissions, and agencies;

(d) Any policy group whose membership includes representatives of publicly owned utilities formed by or pursuant to the laws of this state when meeting together as or on behalf of participants who have contracted for the output of generating plants being planned or built by an operating agency.

(2) "Governing body" means the multimember board, commission, committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.

(3) "Action" means the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions. "Final action" means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.

(4) "Meeting" means meetings at which action is taken.

Amended by Laws 1982, 1st Ex.Sess., ch. 43, § 10, eff. April 20, 1982; Laws 1983, ch. 155, § 1; Laws 1985, ch. 366, § 1.

Severability—Savings—Laws 1982, 1st Ex.Sess., ch. 43: See Historical Note following § 43.52.374.

Notes of Decisions

The term "pursuant to," as used in statutes, does not require an express authorization of an act or event so long as an enabling provision in a statute

implies that such act or event may come into existence at some time after enactment of the statute. Cathcart v. Andersen (1975) 85 Wash.2d 102, 530 P.2d 313.

The School of Law of the University of Washington is a public agency established pursuant to statutory authority. Cathcart v. Andersen (1975) 85 Wash.2d 102, 530 P.2d 313.

Meetings of the faculty of the School of Law of the University of Washington are meetings of the governing body of a public agency and are subject to the provisions of the open public meetings act (this chapter). Cathcart v. Andersen (1975) 85 Wash.2d 102, 530 P.2d 313.

A public agency's governing body, for purposes of the open public meetings act (this chapter), is that body which actually makes the policy and rules of the agency notwithstanding an abstract, rarely exercised, capability of a higher agency to overrule such decisions. Cathcart v. Andersen (1975) 85 Wash.2d 102, 530 P.2d 313.

Any independent examination by state transportation commission of domestic shipbuilder's plans and specifications constituted neither "action" nor "meeting" under Open Public Meetings Act, and thus commission, which took its "action" in awarding ferry construction contract to domestic rather than foreign shipbuilder in open public meeting following presentation by both firms, experts and the public, did not violate the act. Equitable Shipyards, Inc. v. State By and Through Dept. of Transp. (1980) 93 Wash.2d 465, 611 P.2d 396.

"Action" invoking requirements of Open Public Meetings Act of 1971 means transaction of official business of public agency by governing body, and does not automatically occur when majority of members of governing body gather together. Matter of Recall of Estey (1985) 104 Wash.2d 597, 707 P.2d 1338.

42.30.030. Meetings declared open and public

Attorney General's Opinions

The Washington Open Public Meetings Act (this chapter) is applicable to meetings of services and activities fees committees at state institutions of higher education. Op.Atty.Gen.1983, No. 1.

It is not clearly a violation of the Open Public Meeting Act for the board of regents of a state university to consider, and by duly adopted motion, fix the salary of its president in an executive session. Op.Atty.Gen. 1985, No. 4.

Notes of Decisions

Meetings of the faculty of the School of Law of the University of Washington are meetings of the governing body of a public agency and are subject to the provisions of the open public meetings act (this chapter). Cathcart v. Andersen (1975) 85 Wash.2d 102, 530 P.2d 313.

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A "meeting" occurs only when "action" takes place, and does not automatically occur when majority of members of governing body gathered together, for purposes of Open Public Meetings Act of 1971. Matter of Recall of Estey (1985) 104 Wash.2d 597, 707 P.2d 1338.

The Open Public Meetings Act of 1971 is declared to be remedial legislation whose provisions are to be liberally construed (§ 42.30.910) and, accordingly, any exceptions to the act must be narrowly confined. Port Townsend Publishing Co. v. Brown (1977) 18 Wash.App. 80, 567 P.2d 664.

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The Open Public Meetings Act of 1971 is declared to be remedial legislation whose provisions are to be liberally construed (§ 42.30.910) and, accordingly, any exceptions to the act must be narrowly confined. Port Townsend Publishing Co. v. Brown (1977) 18 Wash.App. 80, 567 P.2d 664.

42.30.060. Ordinances, rules, resolutions, regulations, etc., to be adopted at public meetings—Notice

Cross References

Notice of intent to adopt rules under Administrative Procedure Act, see § 34.04.025.

Attorney General's Opinions

It is not clearly a violation of the Open Public Meeting Act for the board of regents of a state university to consider, and by duly adopted motion, fix the salary of its president in an executive session. Op.Atty.Gen. 1985, No. 4.

Notes of Decisions

Municipal defendants did not violate this section in connection with the termination of the plaintiff's temporary employment as a police officer. Jordan v. City of Oakville (1986) 106 Wash.2d 122, 720 P.2d 824.

A municipal corporation has no duty to give advance notice to persons who may be affected by the enactment of a proposed ordinance except as such a duty is imposed by an overriding provision of its charter, state statute or the constitution. A charter provision requiring "due notice" does not, by itself, require notice in the procedural due process sense. King County v. Olson (1972) 7 Wash.App. 614, 501 P.2d 188.

Where a governing body takes an otherwise proper action later invalidated for procedural reasons only, that body may retrace its steps and remedy the defense by reenactment with the proper formalities. Henry v. Town of Oakville (1981) 30 Wash.App. 240, 633 P.2d 892.

Although bondholder, the farmers home administration of the United States department of agriculture, had to be joined as a party defendant in declaratory judgment action challenging the validity of ordinances authorizing the issuance of municipal bonds and providing for their payment, such action was clearly not a contract action against the federal government, as to which state jurisdiction would be barred under federal statute, 28 U.S.C.A. § 1491, giving the United States court of claims jurisdiction to hear contract actions against the United States. Henry v. Town of Oakville (1981) 30 Wash.App. 240, 633 P.2d 892.

Under the Open Public Meetings Act, the primary requirement for regularly scheduled meetings is that they be open to the public; notice of the agenda is required only for special meetings. Dorsten v. Port of Skagit County (1982) 32 Wash.App. 785, 650 P.2d 220.

Where resolution increasing moorage rates was passed at regularly scheduled meeting of port district, port was not required to provide notice of the agenda of that meeting, and enactment of the resolution increasing rates did not violate the Open Public Meetings Act (§ 42.30.010 et seq.). Dorsten v. Port of Skagit County (1982) 32 Wash.App. 785, 650 P.2d 220.

The appearance of fairness doctrine did not apply to port's decision to raise the moorage charges at its marina, since port's decision was legislative rather than judicial and a public hearing was not required. Dorsten v. Port of Skagit County (1982) 32 Wash.App. 785, 650 P.2d 220.

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42.30.070. Times and places for meetings—Emergencies—Exception

The governing body of a public agency shall provide the time for holding regular meetings by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body. Unless otherwise provided for in the act under which the public agency was formed, meetings of the governing body need not be held within the boundaries of the territory over which the public agency exercises jurisdiction. If at any time any regular meeting falls on a holiday, such regular meeting shall be held on the next business day. If, by reason of fire, flood, earthquake, or other emergency, there is a need for expedited action by a governing body to meet the emergency, the presiding officer of the governing body may

provide for a meeting site other than the regular meeting site and the notice requirements of this chapter shall be suspended during such emergency. It shall not be a violation of the requirements of this chapter for a majority of the members of a governing body to travel together or gather for purposes other than a regular meeting or a special meeting as these terms are used in this chapter: *Provided*, That they take no action as defined in this chapter.

Amended by Laws 1973, ch. 66, § 1; Laws 1983, ch. 165, § 2.

42.30.075. Schedule of regular meetings—Publication in state register—Notice of change—"Regular" meetings defined

State agencies which hold regular meetings shall file with the code reviser a schedule of the time and place of such meetings on or before January of each year for publication in the Washington state register. Notice of any change from such meeting schedule shall be published in the state register for distribution at least twenty days prior to the rescheduled meeting date.

For the purposes of this section "regular" meetings shall mean recurring meetings held in accordance with a periodic schedule declared by statute or rule.

Added by Laws 1977, Ex.Sess., ch. 240, § 12, eff. Jan. 1, 1978.

Effective date—Laws 1977, 1st Ex. Sess., ch. 240: See Historical Note following § 34.08.010.

Severability—Laws 1977, 1st Ex. Sess., ch. 240: See § 34.08.910.

Cross References

Public meeting notices in state register, see § 34.08.020.

Library References

Administrative Law and Procedure ⇐353, 395, 453.

C.J.S. Public Administrative Bodies and Procedure §§ 84, 97, 130.

42.30.080. Special meetings

Attorney General's Opinions

Section 52.12.090, rather than this section, governs the calling of a special meeting of a board of fire protection district commissioners; accordingly, such a meeting may be called "by a majority of the commissioners or by the secretary and chairman of the board". Op.Atty.Gen.1979, L.O. No. 16.

In view of the specific legislative directive in § 42.30.140, it is this section and not § 52.12.090 which governs the calling of a special meeting of the board of fire protection district commissioners; accordingly, such a meeting may be called by the presiding officer of the board or by a majority of the members of the board without any necessity for concurrence by the secretary to the board. Op.Atty.Gen.1979, L.O. No. 18.

Notes of Decisions

An unscheduled meeting of a school board for purposes of acting on a resolution is a special meeting within the Open Public Meetings Act of 1971 (ch. 42.30). Mead School Dist. v. Mead Education Asso. (1975) 85 Wash.2d 140, 530 P.2d 302.

The "emergency" contemplated by this section, which permits convening a special meeting without required notices being given to deal with an emergency situation, must be one involving or threatening sudden, unexpected, and severe physical damage and requiring immediate action. Mead School Dist. v. Mead Education Asso. (1975) 85 Wash.2d 140, 530 P.2d 302.

Section 34.04.025, which contains detailed notice requirements regarding meetings to adopt administrative rules, is not rendered inapplicable by this section, which is a part of the Open Public Meetings Act of 1971 providing notice requirements for special meetings. Hartman v. State Game Com. (1975) 85 Wash.2d 176, 532 P.2d 614.

g site other than the regular meeting site and the of this chapter shall be suspended during such emer- e a violation of the requirements of this chapter for a ers of a governing body to travel together or gather han a regular meeting or a special meeting as these his chapter: *Provided*, That they take no action as er.

, ch. 66, § 1; Laws 1983, ch. 155, § 2.

of regular meetings—Publication in state register—of change—"Regular" meetings defined

ich hold regular meetings shall file with the code f the time and place of such meetings on or before r for publication in the Washington state register. from such meeting schedule shall be published in the ribution at least twenty days prior to the rescheduled

? this section "regular" meetings shall mean recurring rdance with a periodic schedule declared by statute or

Ex.Sess., ch. 240, § 12, eff. Jan. 1, 1978.

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Library References

Administrative Law and Procedure ⇐353, 395, 453.

C.J.S. Public Administrative Bodies and Procedure §§ 84, 97, 130.

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Section 34.04.025, which contains detailed notice requirements regarding meetings to adopt administrative rules, is not rendered inapplicable by this section, which is a part of the Open Public Meetings Act of 1971 providing notice requirements for special meetings. Hartman v. State Game Com. (1975) 85 Wash.2d 176, 532 P.2d 614.

Fire chief did not have standing to raise issue whether fire protection district violated Open Public Meetings Act of 1971, § 42.30.010 et seq., by filing to give one of the district commissioners notice of the special meeting at which the fire chief was dismissed; only the aggrieved commissioner could raise such issue. Kirk v. Pierce County Fire Protection Dist. No. 21 (1981) 95 Wash.2d 769, 630 P.2d 930.

Fire protection district did not violate Open Public Meetings Act of 1971, § 42.30.010 et seq., by not giving notice to the print and broadcast media of the special meeting at which fire chief was dismissed, where none of the media had filed the request required under this section for such notice. Kirk v. Pierce County Fire Protection Dist. No. 21 (1981) 95 Wash.2d 769, 630 P.2d 930.

Recall charge that school meeting not regularly scheduled violated Open Public Meetings Act of 1971 was legally insufficient, and therefore, could not constitute grounds for recall, since written notice for special meetings need be given only to each board member and to local media with request on file, where petition characterized meeting as "special meeting" and there was no allegation that its local media had requested notification of special meetings. Matter of Recall of Estey (1985) 104 Wash.2d 597, 707 P.2d 1338.

42.30.110. Executive sessions

(1) Nothing contained in this chapter may be construed to prevent a governing body from holding an executive session during a regular or special meeting:

(a) To consider matters affecting national security;

(b) To consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price;

(c) To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price. However, final action selling or leasing public property shall be taken in a meeting open to the public;

(d) To review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs;

(e) To consider, in the case of an export trading company, financial and commercial information supplied by private persons to the export trading company;

(f) To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge;

(g) To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee. However, subject to RCW 42.30.140(4), discussion by a governing body of salaries, wages, and other conditions of employment to be generally applied within the agency shall occur in a meeting open to the public, and when a governing body elects to take final action hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, that action shall be taken in a meeting open to the public;

(h) To evaluate the qualifications of a candidate for appointment to elective office. However, any interview of such candidate and final action appointing a candidate to elective office shall be in a meeting open to the public;

(i) To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel repre-

senting the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency.

(2) Before convening in executive session, the presiding officer of a governing body shall publicly announce the purpose for excluding the public from the meeting place, and the time when the executive session will be concluded. The executive session may be extended to a stated later time by announcement of the presiding officer.

Amended by Laws 1973, ch. 66, § 2; Laws 1979, ch. 42, § 1, eff. June 7, 1979; Laws 1983, ch. 155, § 3; Laws 1985, ch. 366, § 2; Laws 1986, ch. 276, § 8.

Severability—Laws 1986, ch. 276: See § 53.31.901.

Cross References

Open Public Meetings Act, see ch. 42.30.

Law Review Commentaries

Impact of open meeting laws. Michael C. McClintock, 15 Gonzaga L.Rev. 65 (1980).

Attorney General's Opinions

It is not clearly a violation of the Open Public Meetings Act for the board of regents of a state university to consider, and by duly adopted motion, fix the salary of its president in an executive session. Op.Atty.Gen. 1985, No. 4.

Notes of Decisions

A public agency's meeting to consider the amount of compensation to be offered for condemned property falls within the provision of this section which permits certain deliberations relating to acquisition of property to be held in executive session. Such exception to the requirement of a public meeting is grounded upon the attorney-client relationship which may exist between a public agency and its lawyers whenever the ordinary elements of an attorney-client relationship are present. Port of Seattle v. Rio (1977) 16 Wash.App. 718, 559 P.2d 18.

A public body's discussion regarding the availability of funds and the advisability of retaining or hiring specific employees, without mentioning them by name, is a matter "affecting" the appointment or employment of a public employee within the meaning of this section, which excepts such discussions from the requirement of an open public meeting. Port Townsend Publishing Co. v. Brown (1977) 18 Wash.App. 80, 567 P.2d 664.

Court of appeals would not consider city's argument that nondisclosure of police officers' statements detailing complaints about police chief was consistent with Open Public Meetings Act (§ 42.30.010 et seq.) which permits public body to go into closed, executive session to consider personal matters and complaints about public officer or employee, where argument was not presented to trial court. Columbian Pub. Co. v. City of Vancouver (1983) 36 Wash.App. 25, 671 P.2d 280.

42.30.120. Violations—Personal liability—Penalty—Attorney fees and costs

(1) Each member of the governing body who attends a meeting of such governing body where action is taken in violation of any provision of this chapter applicable to him, with knowledge of the fact that the meeting is in violation thereof, shall be subject to personal liability in the form of a civil penalty in the amount of one hundred dollars. The civil penalty shall be assessed by a judge of the superior court and an action to enforce this penalty may be brought by any person. A violation of this chapter does not constitute a crime and assessment of the civil penalty by a judge shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.

(2) Any person who prevails against a public agency in any action in the courts for a violation of this chapter shall be awarded all costs, including

ation or potential litigation to which the agency, the ember acting in an official capacity is, or is likely to public knowledge regarding the discussion is likely se legal or financial consequence to the agency.

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Court of appeals would not consider city's argument that nondisclosure of police officers' statements detailing complaints about police chief was consistent with Open Public Meetings Act (§ 42.30.010 et seq.) which permits public body to go into closed, executive session to consider personal matters and complaints about public officer or employee, where argument was not presented to trial court. Columbian Pub. Co. v. City of Vancouver (1983) 36 Wash.App. 25, 671 P.2d 280.

reasonable attorney fees, incurred in connection with such legal action. Pursuant to RCW 4.84.185, any public agency who prevails in any action in the courts for a violation of this chapter may be awarded reasonable expenses and attorney fees upon final judgment and written findings by the trial judge that the action was frivolous and advanced without reasonable cause.

Amended by Laws 1973, ch. 66, § 3; Laws 1985, ch. 69, § 1.

Notes of Decisions

Fire chief did not have standing to raise issue whether fire protection district violated Open Public Meetings Act of 1971, § 42.30.010 et seq., by failing to give one the district commissioners notice of the special meeting at which the fire chief was dismissed; only the aggrieved commissioner could raise such issue. Kirk v. Pierce County Fire Protection Dist. No. 21 (1981) 95 Wash.2d 769, 630 P.2d 930.

42.30.130. Violations—Mandamus or injunction

Notes of Decisions

Whether laches will apply to bar an action for mandamus depends upon the particular facts of each case including any justification for delay and the effect of the remedy requested. The fact that the suit is brought in the public interest is just one of the factors to be balanced against the potential harm caused by delay in bringing the suit (overruling State ex rel. Mason v. Board of County Comm'rs, 146 Wash. 449, insofar as it is inconsistent). Lopp v. Peninsula School Dist. (1978) 90 Wash.2d 754, 585 P.2d 801.

The remedies of injunction and mandamus, which are authorized by this section to prevent violations of the open public meetings act, are both subject to the doctrine of laches. Lopp v. Peninsula School Dist.(1978) 90 Wash.2d 754, 585 P.2d 801.

Fire chief did not have standing to raise issue whether fire protection district violated Open Public Meetings Act of 1971, § 42.30.010 et seq., by failing to give one of the district commissioners notice of the special meeting at which the fire chief was dismissed; only the aggrieved commissioner could raise such issue. Kirk v. Pierce County Fire Protection Dist. No. 21 (1981) 95 Wash.2d 769, 630 P.2d 930.

42.30.140. Chapter controlling—Application

If any provision of this chapter conflicts with the provisions of any other statute, the provisions of this chapter shall control: *Provided*, That this chapter shall not apply to:

(1) The proceedings concerned with the formal issuance of an order granting, suspending, revoking, or denying any license, permit, or certificate to engage in any business, occupation or profession or to any disciplinary proceedings involving a member of such business, occupation or profession, or to receive a license for a sports activity or to operate any mechanical device or motor vehicle where a license or registration is necessary; or

(2) That portion of a meeting of a quasi-judicial body which relates to a quasi-judicial matter between named parties as distinguished from a matter having general effect on the public or on a class or group: or

(3) Matters governed by Title 34 RCW, the administrative procedure act, except as expressly provided in RCW 34.04.025; or

(4) That portion of a meeting during which the governing body is planning or adopting the strategy or position to be taken by such governing body during the course of any collective bargaining, professional negotiations, grievance or mediation proceedings, or reviewing the proposals made in such negotiations or proceedings while in progress.

Amended by Laws 1973, ch. 66, § 4.

Attorney General's Opinions

In view of the specific legislative directive in this section, it is § 42.30.080 and not § 52.12.090 which governs the calling of a special meeting of the board of fire protection district commissioners; accordingly, such a meeting may be called by the presiding officer of the board or by a majority of the members of the board without any necessity for concurrence by the secretary to the board. Op.Atty.Gen.1979, L.O. No. 18.

Notes of Decisions

School directors determining whether to renew a teacher's contract are performing a quasi-judicial function and therefore are exempt from the requirements of public access of ch. 42.30, the open public meetings statute. Pierce v. Lake Stevens School Dist. (1974) 84 Wash.2d 772, 529 P.2d 810.

42.30.200. Governing body of recognized student association at college or university—Chapter applicability to

The multimember student board which is the governing body of the recognized student association at a given campus of a public institution of higher education is hereby declared to be subject to the provisions of the open public meetings act as contained in this chapter, as now or hereafter amended. For the purposes of this section, "recognized student association" shall mean any body at any of the state's colleges and universities which selects officers through a process approved by the student body and which represents the interests of students. Any such body so selected shall be recognized by and registered with the respective boards of trustees and regents of the state's colleges and universities: *Provided*, That there be no more than one such association representing undergraduate students, no more than one such association representing graduate students, and no more than one such association representing each group of professional students so recognized and registered at any of the state's colleges or universities.

Added by Laws 1980, ch. 49, § 1.

42.30.920. Severability—1971 1st ex.s. c 250

Notes of Decisions

The Open Public Meetings Act of 1971 is remedial legislation; its provisions are to be liberally construed, and its exceptions are to be strictly construed. Mead School Dist. v. Mead Education Asso. (1975) 85 Wash.2d 140, 530 P.2d 302.

CHAPTER 42.32—MEETINGS

Cross References

Open Public Meetings Act, see ch. 42.30.

State residential schools, per capita cost of care to be adopted as a rule in accordance with this chapter, see § 72.33.660.

CHAPTER 42.36—APPEARANCE OF FAIRNESS DOCTRINE—LIMITATIONS

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42.36.010. Application

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Added by Laws 1982, ch.

Library References

Zoning and Land Plann
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ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

March 23, 1987

MEMORANDUM

TO: Representative Fran Ulmer

FROM: Ginny Fay
Legislative Analyst

RE: Alaska State Open Meetings Act
Research Request 87.162

You requested information regarding enforcement and penalty provisions of state open meeting laws and public meeting notification requirements. You had a number of specific questions on open meeting laws. This memorandum lists each question with the pertinent information immediately following.

1. Do some states penalize violators in addition to voiding the action taken? Which states have penalties and are penalties mandatory or discretionary? Who has standing to enforce the law? What are the legal mechanisms for enforcement of these laws? Are court costs and attorney fees available to the prevailing party?

Tables 1 and 2 provide information regarding action voidableness, penalties for violations, citizen standing, and attorney fees. Action taken in illegal meetings are voided or considered invalid or not binding in 43 (86 percent) states and the District of Columbia. Also, in 43 states and the District of Columbia, citizens have standing to sue and enforce the law (Table 1). The states of Iowa, Kansas, Missouri and Oregon explicitly place the burden of proof on the alleged violators; Maryland explicitly places the burden on the plaintiff. In 37 states, legal recourse to halt secrecy is available through injunctions or writs of mandamus (Table 2).

TABLE 1
VIOLATION AND PENALTY PROVISIONS OF STATE OPEN MEETING LAWS

STATE	VOIDABLE*	CITIZEN STANDING	ATTORNEY FEES	SANCTIONS
ALABAMA		Y		Misdemeanor, not more than $500
ALASKA	Y	Y		None
ARIZONA	Y	Y	Y	Misdemeanor, not more than $100 and/or 30 days
ARKANSAS	I	Y		Misdemeanor, not more than $200 and/or 30 days
CALIFORNIA		Y	Y	Misdemeanor, for Section 54950
COLORADO	I	Y		None
CONNECTICUT	Y	Y	Y	Civil fine, not less than $20 or more than $1,000
DELAWARE	NB	Y		None
DIST. COLUMBIA	Y	Y		None
FLORIDA	NB	Y	Y	Misdemeanor, not more than $500 and/or 6 months
GEORGIA	NB	Y		Misdemeanor, not more than $100
HAWAII	Y		Y	Misdemeanor, remove from office
IDAHO	Y			None
ILLINOIS	Y	Y	Y	Misdemeanor, fine for judicial relief
INDIANA	Y	Y	Y	Misdemeanor, not more than $500 plus 30 days
IOWA	Y	Y	Y	Civil fine, not less than $100 or more than $500
KANSAS	NB	a		Misdemeanor, not more than $500
KENTUCKY	NB	Y		Misdemeanor, not more than $100 or imprisonment
LOUISIANA	NB	Y		Misdemeanor, not more than $1,000 or 7 days
MAINE	Y	Y		Not more than $500 or one year
MARYLAND	Y	Y	Y	Misdemeanor, not more than $1,000
MASSACHUSETTS	Y	b		None
MICHIGAN	Y	Y	Y	Misdemeanor, up to $1,000 1st off., $2,000 or 1 yr. 2nd off.
MINNESOTA		Y		Civil penalty not more then $100
MISSISSIPPI		Y		None
MISSOURI	Y	Y		Civil fine, $100
MONTANA	Y		Y	Offense of civil misconduct
NEBRASKA	Y	Y	Y	Misdemeanor, not more then $50
NEVADA	Y	Y		Misdemeanor
NEW HAMPSHIRE	Y	Y	Y	None
NEW JERSEY	Y	Y		Fine, $100-$500
NEW MEXICO	I	c		Misdemeanor, not more than $100
NEW YORK	Y	Y	Y	Pay legal fees and costs
NORTH CAROLINA	Y	Y	Y	None
NORTH DAKOTA	Y	Y		"Guilty of infraction on first offense"
OHIO	I	Y		Remove from office
OKLAHOMA	I			Misdemeanor, not more than $500 or one year
OREGON	Y	Y	Y	Liable for attorney fees
PENNSYLVANIA	Y	Y	Y	Fine up to $100
RHODE ISLAND	Y	Y		Civil fine up to $1,000
SOUTH CAROLINA		Y	Y	Misdemeanor, $100-$300 or 30 to 90 days
SOUTH DAKOTA				Misdemeanor
TENNESSEE	Y	Y		Court may "impose penalties"
TEXAS		Y		Misdemeanor, not more than $500 and/or 6 months
UTAH	Y	Y		Misdemeanor
VERMONT	Y			Misdemeanor, not more than $500
VIRGINIA	NB	Y	Y	Civil penalty, $25-$500
WASHINGTON	Y	Y		Civil penalty of $100
WEST VIRGINIA	Y	Y		Misdemeanor, $100-$500 and/or up to 10 days
WISCONSIN	Y	Y	Y	Fine up to $300
WYOMING	Y			None
TOTAL	44	44	20	39

* Y=yes, I=invalid, NB=not binding
a=must petition district court, b=three or more voters, c=five citizens

Source: Council of State Governments 1983, Freedom of Information Center, and state open meeting statutes.

Prepared by the House Research Agency, March 1987 (OPLAW; 861217-10).

TABLE 2

Summary of Open-Meeting Laws--Part I This Study

State	Includes statement of public policy	Provides for open legislature	Provides for open legislative committees	Opens state agencies	Opens county local agencies	Opens county board	Opens city councils	Forbids closed executive sessions	Exceptions[a] and/or reasons for executive session	Legal recourse to halt secrecy	Actions in meetings in violation void	Provides penalties for violation	Score
	1	2	3	4	5	6	7	8		9	10	11	
Alabama				y	y	y	y		+[a]			y	5
Alaska	y	y	y	y	y	y	y		x		y		8
Arizona	y	y	y	y	y	y	y		x	y	y	y	10
Arkansas	y			y	y	y	y		+		y	y	6
California	y	y	y	y	y	y	y		-	y		y	9
Colorado	y	y	y	y	y	y	y		+[a]	y	y		9
Connecticut		y	y	y	y	y	y		+	y	y	y	6
Delaware		y	y	y	y	y	y		-	y	y	y	9
Florida		y	y	y	y	y	y	y	+	y	y	y	9
Georgia				y	y	y	y		x		y	y	6
Hawaii	y			y	y	y	y		-	y	y	y	8
Idaho	y		y	y	y	y	y		x		y		7
Illinois	y			y	y	y	y		-	y	y	y	8
Indiana	y			y	y	y	y		-	y	y		7
Iowa	y			y	y	y	y		-	y	y	y	8
Kansas	y	y	y	y	y	y	y		x	y	y	y	10
Kentucky			y	y	y	y	y		-	y	y	y[b]	8
Louisiana	y	y	y	y	y	y	y		x[a]	y	y	y	9
Maine	y	y	y	y	y	y	y		x		y	y	9
Maryland	y	y	y	y	y	y	y		-	y	y	y	10
Massachusetts				y	y	y	y		x	y	y		6
Michigan		y	y	y	y	y	y		-	y	y	y	9
Minnesota				y	y	y	y		+			y	5
Mississippi	y		y	y	y	y	y		-	y			7
Missouri		y	y	y	y	y	y		x	y	y	y	9
Montana	y	y	y	y	y	y	y		+		y		8
Nebraska	y			y	y	y	y		x	y	y	y	8
Nevada	y			y	y	y	y		+	y	y	y	8
New Hampshire	y	y	y	y	y	y	y		x	y	y		8
New Jersey	y	y	y	y	y	y	y		x	y	y	y	10
New Mexico		y	y	y	y	y	y		x	y	y	y	9
New York	y	y	y	y	y	y	y		x	y	y		9
North Carolina	y	y	y	y	y	y	y		-	y	y	y	9
North Dakota		y	y	y	y	y	y	†	+[a]		y	y	7
Ohio				y	y	y	y		-	y	y	y	7
Oklahoma	y			y	y	y	y		+		y	y	7
Oregon	y	y	y	y	y	y	y		-	y	y	y[c]	10
Pennsylvania		y	y	y	y	y	y		+	y	y	y	9
Rhode Island	y		y	y	y	y	y		x	y	y	y	8
South Carolina		y	y	y	y	y	y		x[a]	y		y[b]	8
South Dakota				y	y	y	y		+			y	5
Tennessee	y	y	y	y	y	y	y	y	+	y	y	y	11
Texas		y	y	y	y	y	y		-	y		y	8
Utah	y	y	y	y	y	y	y		+	y	y		9
Vermont	y			y	y	y	y		x		y	y	7
Virginia	y	y	y	y	y	y	y		-	y	y	y	10
Washington	y			y	y	y	y		x	y	y	y	8
West Virginia	y	y	y	y	y	y	y		-	y	y	y	10
Wisconsin	y	y	y	y	y	y	y		x	y	y	y[b]	10
Wyoming	y			y	y	y	y		-		y		6
Totals	33	29	33	50	50	50	50	2	+=14 x=19 -=17	37	43	40	417
Percent	66%	58%	66%	100%	100%	100%	100%	4%	+=28% x=38% -=34%	74%	86%	80%	75.5%

Total average percent for all categories: 75.8%. Total average percent for categories 1-8: 74.3%. Total average percent for categories 9-11: 80.0%.

†North Dakota statute forbids executive session "unless otherwise prohibited by law." Florida and Tennessee statutes prohibit executive session "except as otherwise provided in the Constitution."

*This adjunct category indicates stated exceptions and/or reasons allowed for closed session. + indicates five or fewer; x, six to ten; -, more than ten.

[a]Denotes an encompassing phrase. For example, Alabama's law provides for executive session "When the character or good name of a woman or man is involved." (Ala. Code tit. 13-1-14-2). Phrases such as this one could be used to allow any number of subjects to be discussed in executive session.

[b]Indicates laws which permit the court to grant equitable relief.

[c]Indicates the only penalty is for smoking in open meeting.

Source: Sharon Hartin Iorio, "How State Open Meeting Laws Now Compare with Those of 1974," Journalism Quarterly, Winter 1985, Vol. 62 #4, pp. 741-749 and state open meeting statutes.

Thirty-nine states penalize violators in addition to voiding actions taken. Eight of these are civil penalties, 24 are criminal misdemeanors, four define the penalties as fines, Ohio removes violators from office, and two states penalize violators through the payment of attorney and court fees. In total, 20 state statutes explicitly contain provisions for the payment of attorney fees and costs to the prevailing party (Table 1). Most of these provisions provide for the payment of attorney fees to the plaintiff if indeed a violation of the an open meeting law occurred; some require payment of legal fees by the plaintiff if the accusation was "frivolous" (see North Carolina, Attachment A). In addition to Ohio, the states of Arizona, Iowa, and Minnesota provide for the removal of violators from office. Penalties in most of the 39 states are discretionary though some states do set mandatory penalties (see for example, Alabama's statute in Attachment A). A number of state statutes specifically identify legal procedures in response to alleged violations (see Rhode Island and Tennessee statutes, Attachment A). Attachment A contains penalty and enforcement provisions of 33 state statutes.

2. Have any states developed "manuals" summarizing their Open Meetings Act which includes a summary of case law, applicability, and what constitutes a violation?

The states of Arizona, Florida, Minnesota, Missouri, Nevada, New York, Utah, and Washington have manuals (Attachment B).[1] Washington's manual is actually an extensive attorney general's opinion. The manuals in most states are developed by the state's attorney general's office unless the state has a special open meetings commission (such as New York). Conversations with Susan Cox, of the Alaska Attoney General's Office, and attorney general offices in other states indicate that the writing of a manual for a broad law, such as Alaska's, is difficult because it requires the subjective judgment of how a court is likely to interpret the law.

3. Have Open Meeting Acts been applied differently to local legislative bodies acting in a quasi-judicial or administrative capacity as opposed to its usual legislative manner?

None of the three branches of government (executive, legislative, and judicial) is granted a blanket exemption from state open meeting laws. The judiciary is generally excluded, but not wher it acts in an administrative or rule-making capacity. Quasi-judicial bodies have become a subject of contention in most states; the issue is whether they are judicial or administrative bodies. Application of open meeting laws to any one of the three

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[1]This, however, is not an exhaustive list but the numbers are examples from geographically and legally varying states.

branches of government often depends on how the separation of powers doctrine is interpreted. Consequently, there are a variety of interpretations concerning the relationship between open meeting laws and quasi-judicial bodies.[2]

Open meeting laws are applicable to local legislative bodies in all 50 states (Table 2). Administrative bodies and actions are the most consistently covered by open meeting laws throughout the states. In addition, the Alaska Open Meeting Act explicitly applies to administrative bodies (AS 44.62.310, Attachment C). This suggests that a local legislative body performing an administrative function would be covered by the Alaska Open Meeting Act.

In contrast, applicability of a local legislative body acting in a quasi-judicial manner is not quite as clear. The Alaska Open Meeting Act states that it does not apply to "judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding." This indicates that these bodies are not given a blanket exemption from the law, but instead their **deliberative process** is not covered. It appears that it is much less common for local legislative bodies to act in quasi-judicial capacities in other states; there is very little case law directly applicable to Alaska. Conversations with attorneys at the National Association of Attorneys General indicate that appeals of executive branch decisions such as zoning commissions and planning boards are generally elevated to the judiciary rather than having the local legislative body act as an intermediate quasi-judicial body. Because open meeting laws apply to local legislative bodies, the question is whether an exception should be made when the local body is acting in a quasi-judicial manner.

The Alaska Open Meeting Act does not explicitly define a "public body" or give any indication that the act should apply differently to the different branches of government. In general, a court does not fit the definition of a "public body" as defined by other states' statutes, but quasi-judicial bodies often do. Therefore, the coverage of quasi-judicial bodies and functions differ from state to state, because some states view their function as more administrative than judicial.[3] Case law in Arizona, Florida, and Utah sets a precedent for not excluding quasi-judicial bodies or functions. In Canney v. Board of Public Instruction of Alachua County, the Supreme Court of Florida ruled that while judicial proceedings were clearly outside the reach of the Sunshine Law, a board exercising quasi-judicial functions was not part of the judicial branch. The court emphasized the fact that the characterization by a school board of a decision-making process as "quasi-judicial" did not make the body a judicial body.

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[2]The National Association of Attorneys General, 1979, "Open Meetings: Types of Bodies Covered, North Carolina," June, p. 47.

[3]Ibid., p. 58.

The Utah Open and Public Meeting Act Manual (see Attachment B) covers the applicability of the act to courts and administrative agencies acting in a quasi-judicial capacity. The Utah manual states that inasmuch as the judiciary is not included within the definition of "public body" in the Utah statute, and the Utah Constitution precludes legislative interference in judicial functions, the Utah Attorney General concluded that the act did not apply in the deliberation of cases before the Public Service Commission. The deliberation phase of any hearing takes place when the hearing officers retire privately to weigh the evidence and credibility of witnesses and issue a decision similar to a jury deciding a case. All other portions of the hearing are open to the public, except the deliberative phase.[4]

This Attorney General opinion was challenged in the Salt Lake County District Court (Civil Case No. 245616) where the plaintiffs sought a judgment declaring that the deliberation process should also be subject to the Open Meeting Act. The district court entered judgment that the act applies to and governs meetings of the Utah Public Utilities Commission when that public body deliberates, votes upon, establishes or otherwise evaluates existing or proposed public utility rates, tolls, charges, rentals or classifications. This decision was appealed to the Supreme Court of Utah, which reversed the lower court decision and held that the public service commission meeting should be open to the public during its "information obtaining" activities, but not during its "decision making" or judicial phase of those activities, thus sustaining the attorney general's foregoing opinion.[5]

Arizona amended its Freedom of Information Act to limit its exception for "any judicial proceeding" to exempt only "judicial proceedings of any court." This was done after the Arizona Supreme Court's decision in Arizona Press Club, Inc. v. Arizona Board of Tax Appeals, which allowed a public body acting in a quasi-judicial manner to be exempt from the law. The Arizona law now explicitly includes any quasi-judicial body of the state.

In addition, the state of Minnesota open meeting law does not apply to any state agency, board, or commission when exercising quasi-judicial functions involving disciplinary proceedings. This exemption is part of a fairly common exclusion of meetings involving the character and personal reputation of individuals. The New York statute exempts judicial and quasi-judicial proceedings, except proceedings of the public service commission and zoning board of appeals because these are public interest proceedings.

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[4]Utah Attorney General Opinion No. 77-020, August 15, 1977.

[5]Common Cause of Utah v. Utah Public Service Commission, 598 P. 2d 1312 (Utah, 1979).

4. Do municipal code of ethics address open meeting laws and if so how do these codes and open meeting acts interrelate?

The book Codes of Professional Responsibility (edited by Rena A. Gorlin, Washington: BNA, 1986) contains codes of ethics for federal officials, including members of Congress. There is no mention of open meetings. Conversations with the Freedom of Information Center and other information agencies indicate that open meeting laws are not covered in codes of ethics because these laws are more of a legal than ethical consideration.

You also asked generally about open meeting case law. Attached (Attachment D) is the most recent compilation and discussion of open meeting case law.[6]

In regard to public meeting notice requirements, Attachment E is a memorandum done by this agency in November 1986 on this topic.

I hope this information is useful; please do not hesitate to contact this agency if you have additional questions.

Attachments

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[6]If you would like more recent or additional case law, Legal Services can compile this information using the West Law computer which costs $100 per hour of computer time.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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November 19, 1987

MEMORANDUM

TO: Representative Kay Brown

FROM: Karla Hart KH
Legislative Analyst

RE: **Other States' Constitutional Provisions for Open Meetings**
Research Request 88.061

You requested this agency to gather language from other state constitutions which provides for open meetings. You expressed a particular interest in provisions for the closure of certain types of meetings, while providing that, in general, meetings are to be open.

Following is a list of the open meeting provisions in the constitutions of 37 states; I was unable to locate provisions in those of the remaining 13 states.[1] I have copied the statutory language verbatim, emphasizing in bold the provisions for closed meetings. Of the 37 states, only six do not make any such provisions for closed meetings under certain circumstances.

ALABAMA. Article 4, Section 57.

> The doors of each house shall be opened except on such occasions as, in the opinion of the house, may require secrecy, but no person shall be admitted to the floor of either house while the same is in session, except members of the legislature, the officers and employes of the two houses, the governor and his secretary, representatives of the press, and other persons to whom either house, by unanimous vote, may extend the privileges of its floor.

ARKANSAS. Article 5, Section 13.

> Sessions to be open.--The sessions of each house and of committees of the whole shall be open, unless when the business is such as ought to be kept secret.

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[1]The states without constitutional provisions for open meetings are: Alaska, Arizona, Kansas, Kentucky, Louisiana, Maine, Massachusetts, New Jersey, North Carolina, Oklahoma, Rhode Island, Virginia and West Virginia.

CALIFORNIA. Article 4, Section 7(c).
The proceedings of each house and the committees thereof shall be public except as provided by statute or by concurrent resolution, when such resolution is adopted by a two-thirds vote of the members of each house, provided, that if there is a conflict between such a statute and concurrent resolution, the last adopted shall prevail.

COLORADO. Article 5, Section 14.
Open Sessions. The sessions of each house, and of the committees of the whole, shall be open, unless when the business is such as ought to be kept secret.

CONNECTICUT. Article 3, Section 16.
Debates to be public. The debates of each house shall be public, except on such occasions as in the opinion of the house may require secrecy.

DELAWARE. Article 2, Section 11.
Accessibility to each House and Committees of the Whole. The doors of each House, and Committees of the Whole, shall be open unless when the business is such as ought to be kept secret.

FLORIDA. Article 3, Section 4(b).
Sessions of each house shall be public; except sessions of the senate when considering appointment to or removal from public office may be closed.

GEORGIA. Article 3, Section 4, Paragraph 11.
Open Meetings. The sessions of the General Assembly and all standing committee meetings thereof shall be open to the public. Either house may by rule provide for exceptions to this requirement.

HAWAII. Article 3, Section 12, Paragraph 4.
Every meeting of a committee in either house or of a committee comprised of a member or members from both houses held for the purpose of making decision on matters referred to the committee shall be open to the public.

IDAHO. Article 3, Section 12.
Secret sessions prohibited.--The business of each house, and of the committee of the whole shall be transacted openly and not in secret session.

ILLINOIS. Article 4, Section 5(c).

Sessions of each house of the General Assembly and meetings of committees, joint committees and legislative commissions shall be open to the public. Sessions and committee meetings of a house may be closed to the public if two-thirds of the members elected to that house determine that the public interest so requires; and meetings of joint committees and legislative commissions may be so closed if two-thirds of the members elected to each house so determine.

INDIANA. Article 4, Section 13.

Doors to be open.--The doors of each House, and of Committees of the Whole, shall be kept open, except in such cases, as, in the opinion of either House, may require secrecy.

IOWA. Article 3, Section 13.

Doors open. The doors of each house shall be open, except on such occasions, as, in the opinion of the house, may require secrecy.

MARYLAND. Article 3, Section 21.

Doors to be kept open. The doors of each House, and of the Committee of the Whole, shall be open, except when the business is such as ought to be kept secret.

MICHIGAN. Article 4, Section 20.

Open meetings. The doors of each house shall be open unless the public security otherwise requires.

Convention Comment: This is a revision...declaring that meetings of the legislature shall be open unless public "security" otherwise requires. The new word replaces "welfare" and is more descriptive of a situation which might require secrecy.

MINNESOTA. Article 4, Section 14.

Open sessions. Each house shall be open to the public during its sessions except in cases which in its opinion require secrecy.

MISSISSIPPI. Article 4, Section 58.

The doors of each house, when in session, or in committee of the whole, shall be kept open, except in cases which may require secrecy; and each house may punish, by fine and imprisonment, any person not a member who shall be guilty of disrespect to the house by any disorderly or contemptuous behavior in its presence, or who shall in any way disturb its deliberations during the session; but such imprisonment shall not extend beyond the final adjournment of that session.

MISSOURI. Article 3, Section 20.

Regular sessions of assembly--quorum--compulsary attendance--public sessions--limitation on power to adjourn. ...The sessions of each house shall be held with open doors, except in cases which may require secrecy but not including the final vote on bills, resolutions and confirmations...

MONTANA. Article 5, Section 11, Paragraph 3.
The sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public.

NEBRASKA. Article 3, Section 11.
The Legislature shall keep a journal of its proceedings and publish them (except such parts as may require secrecy) and the yeas and nays of the members on any question, shall at the desire of any one of them be entered on the journal. All votes shall be viva voce. The doors of the Legislature and of the Committees of the Whole, shall be open, unless when the business shall be such as ought to be kept secret.

NEVADA. Article 4, Section 15.
Open sessions: adjournment for more than 3 days. The doors of each House shall be kept open during its session, except the Senate while sitting in executive session, and neither shall, without the consent of the other, adjourn for more than three days nor to any other place than that in which they may be holding their sessions.

NEW HAMPSHIRE. Part 2, Article 8.
Open Sessions of Legislature. The doors of the galleries, of each house of the legislature, shall be kept open to all persons who behave decently, except when the welfare of the state, in the opinion of either branch, shall require secrecy.

NEW MEXICO. Art[illegible], Section 12.
Public [illegible]ns; journals. All sessions of each house shall be publi[illegible]h house shall keep a journal...

NEW YORK. [illegible]e 3, Section 10.
Jou[illegible]; open sessions; adjournments. Each house of the legi[illegible]re shall keep a journal of its proceedings, and publish the same, [illegible]cept such parts as may require secrecy. The doors of each house [illegible]all be kept open, except when the public welfare shall requi[illegible]secrecy. Neither house shall, without the consent of the other, [illegible]journ for more than two days.

NORTH DAKOTA. [illegible]rticle 4, Section 14.
All sessions of the legislative assembly, including the committee of the whole and meetings of legislative committees, must be open and public.

OHIO. Article 2, Section 13.
When session to be public. The proceedings of both houses shall be public, except in cases which, in the opinion of two-thirds of those present, require secrecy.

OREGON. Article 4, Section 14.
Deliberations to be open; rules to implement requirement. The deliberations of each house, of committees of each house or joint committees and of committees of the whole, shall be open. Each house shall adopt rules to implement the requirement of this section and the houses jointly shall adopt rules to implement the requirements of this section in any joint activity that the two houses may undertake.

PENNSYLVANIA. Article 2, Section 13.
Open sessions. The sessions of each House and of committees of the whole shall be open, unless when the business is such as ought to be kept secret.

SOUTH CAROLINA. Article 3, Section 23.
Doors open. The doors of each house shall be open, except on such occasions as in the opinion of the House may require secrecy.

SOUTH DAKOTA. Article 3, Section 15.
Open legislative sessions--Exception. The sessions of each house and of the committee of the whole shall be open, unless when the business is such as ought to be kept secret.

TENNESSEE. Article 2, Section 22.
Open sessions and meetings--Exception.--The doors of each House and of committees of the whole shall be kept open, unless when the business shall be such as ought to be kept secret.

TEXAS. Article 3, Section 16.
Open sessions. The sessions of each House shall be open, except the Senate when in Executive session.
Interpretative Commentary: Executive sessions are those where the Senate considers matters not discreet to reveal to the public. At such times there is also considered the gubernatorial appointments which must be confirmed or rejected by the Senate.

UTAH. Article 6, Section 15.
Sessions to be public--Adjournments. All sessions of the Legislature, except those of the Senate while sitting in executive session, shall be public; and neither house, without the consent of the other, shall adjourn for more than three days, nor to any other place than that in which it may be holding session.

VERMONT. Chapter 2, Section 8.
Doors of General Assembly to be open. The doors of the House in which the General Assembly of this Commonwealth shall sit, shall be open for the admission of all persons who behave decently, except only when the welfare of the State may require them to be shut.

WASHINGTON. Article 2, Section 11.

Journal, Publicity of Meetings--Adjournments. Each house shall keep a journal of its proceedings and publish the same, except such parts as require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy...

WISCONSIN. Article 4, Section 10.

Journals; open doors; adjournments. Each house shall keep a journal of its proceedings and publish the same, except such parts as require secrecy. The doors of each house shall be kept open except when the public welfare shall require secrecy...

WYOMING. Article 3, Section 14.

Sessions to be open. The sessions of each house and of the committee of the whole shall be open unless the business is such as requires secrecy.

* * *

I hope this compilation is helpful. If you need additional information, please call.

ALASKA STATE LEGISLATURE
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November 26, 1986

MEMORANDUM

TO: Representative John Sund

ATTN: John Hartle

FROM: Ginny Fay
Legislative Analyst

RE: Provisions of State Open Meeting Laws
Research Request 87-045

You requested that we identify states with open meeting laws and discuss the provisions of these laws. All states have open meeting or "sunshine" laws, however, the provisions vary considerably among states. A 1984 study of state sunshine laws identified 23 separate provisions that can be contained in these laws and found that states varied considerably in their definition of sunshine (as measured by the combinations of these provisions).[1] Tennessee and Florida led the states; their laws contain 21 and 20 of these provisions, respectively. In contrast, laws in Pennsylvania, Wisconsin and Wyoming contained only eight provisions each. Table 1 (attached) presents the 11 most common provisions of state open meeting laws and indicates the number of states' laws that contain these provisions.

Table 2 (attached) provides the citation of the open meeting and freedom of information laws in each state; Table 3 specifically identifies and contrasts eight major provisions of open meeting laws. The majority of states have had their open meeting law interpreted by the state's attorney general. Somewhat fewer than half of the states have had their laws reviewed by the courts; have laws that do not exempt informal meetings; and/or have laws which include specific criminal penalties for violations. Approximately one-third of the states' laws do not explicitly exempt any government bodies and/or require that personnel matters be discussed in open meetings. Relatively few state laws require open committee meetings or that meetings be open even if there is no quorum.

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[1]Council of State Governments, The Book of the States, 1984-1985. (Lexington, Kentucky), 1984, p. [illegible].

Table 4 (attached) provides summary information regarding public notice requirements and identifies states where actions are void if open meeting law requirements are not followed.

The basic tenet of open meeting laws is that people should be informed about '' government that represents them in order for a democracy to functi While special provisions may vary among states, almost every state's open meetings law has four basic components:

- definition of a meeting or record;
- provisions for executive sessions;
- notice requirements; and
- provisions for enforcement.

Statutes on this subject are necessary because common law has not set precedents for access to information. In 1980, the U.S. Supreme Court ruled that the First Amendment did provide a right to access to criminal trials by all citizens (Richmond Newspapers v. Virginia 100 S. Ct. 2814, 1980) but the courts have generally been unwilling to read into the First Amendment a right of access to information. Most states have opted to write laws declaring that all meetings and records are open and then write exceptions into the laws.[3]

The trend during the 1980s has continued toward more open government in the states. In recent years, many states have made open meeting laws re stringent and made penalties for violations harsher. As late as 1 9, most open meeting laws did not apply to legislatures.[4] In Kentucky.

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[2]Council of State Governments, Backgrounder "Government in the Sunshine," (Lexington, Kentucky), June 1986, p.1.

[3]According to Don R. Pember [in Mass Media Law, Second Edition (Dubuque, Iowa: Wm. C. Brown Co. Publishers), 1981, p.130] many legal experts believe that the most important component of an access law is the legislative intent. "A strong legislative declaration in favor of open access can be used to persuade a judge that if a section of the law is vague it should be interpreted to grant access, rather than to restrict access, since that is what the legislature wants," wrote William R. Wright II in the Mississippi Law Review. He points to the Washington intent section as a model: "The legislature finds and declares that all public agencies of this state and subdivisions thereof exist to aid in the conduct of public business. It is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly."

[4]National Association of Attorney Generals, Open Meetings: Exceptions to State Laws (Raleigh, N.C.:NAAG), March 1979, p.14.

General Assembly meetings other than those of the standing commitees are closed. Legislative subcommittee and conference meetings are closed in Mississippi. Meetings of the Wisconsin legislature may be closed when the state's sunshine law conflicts with legislative rules. In Alaska, organizational meetings of the legislature are closed. A committee meeting in the New Hampshire legislature may be closed by a vote of three-fifths of the members. The North Carolina open meetings law does not apply to the Advisory Budget Commission of the Legislative Services Commission. The Georgia and Oklahoma sunshine laws do not apply to the legislature.[5]

Many states allow caucus meetings in the legislature to be closed. Those states are: Alaska, California, Delaware, Hawaii, Idaho, Illinois, Indiana, Kentucky, Montana, Nevada, New Jersey, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, Utah, Virginia, Washington, West Virginia, and Wyoming.

Nearly all states' open meeting laws provide for remedial action if the law is violated. In 36 states, actions are voided if the open meetings law is not followed (see Table 3). Georgia legislation (1982) made it a misdemeanor for officials to willfully obstruct release of public records or information and required 24-hour notice of any public hearing. The laws in 21 states include specific criminal penalties for the violation of open meeting laws (see Table 2).

Complications with the enforcement of open meeting statutes have led several states to form independent commissions to review complaints. In New York, the Committee on Open Government was established to handle citizen appeals on denial of open meeting and information requests. The New York committee is composed of seven members, three from government and four from the public. At least two of the public members are news media representatives. The committee has the authority to provide written and oral advice and mediate controversies. Between 1974 and 1979, the committee issued 1,500 written advisory opinions.[6]

I hope this information is of use to you. If you have any questions, or would like additional information, please call.

GF

Attachments

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[5]Freedom of Information Center, "Executive Sessions: Reasons to Close." 1984.

[6]New York Department of State, "Freedom of Information and Open Meetings Opening the Door," January 1981, Pamphlet, p.1.

Table 1
Open Meetings Laws in the States: Major Provisions

Provision	Number of States
Injunctive relief or other remedial action is provided if law violated	47
Committee meetings must be open	46
Meetings of local entities must be open	46
Discussions, in addition to actual decision making, must be held in open meeting	42
No exemptions to open-meeting provisions are allowed unless specified in law	40
A policy statement says the open-meeting law should be liberally construed	37
Where closed (executive) sessions are allowed, all final actions must be taken in open meetings	37
Quasi-judicial meetings must be open	34
When the law permits closed meetings, the parties involved may request that they be open	29
There is no provision for discussing investments, donations or other financial matters in executive session	25
Labor negotiations must be open	25

Source: Council of State Governments, The Book of the States, 1985-1986, (Lexington, Kentucky), 1985, p. 49.

TABLE 2
OPEN MEETING AND RECORDS STATUTES

STATES	OPEN MEETING LAW STATUTE CITATION	OPEN RECORDS LAW STATUTE CITATION
Alabama	Code 13-14-2	Section 36-12-40, 41
Alaska	Section 44.62.310-312	Section 09.25.110 to 09.25.125
Arizona	Section 38-431	Section 39-121,41-135
Arkansas	Section 12-2801 to 2807	Section 12-2801 to 2807
California	Section 11120 to 11131	Section 6250 to 6265
Colorado	Section 24-6-401-02	Section 24-72-201
Connecticut	Section 1-15 to 1-2 K	Section 1-15 to 1-21K
Delaware	Title 29, Section 10001-05	Title 29, Sect. 10001-05
Florida	Section 286.0105 to 286.26	Section 119.01 to 119.12
Georgia	Section 50-14-1 to 50-14-4	Section 50-14-1 to 50-14-4
Hawaii	Section 92-1 to 92-13	Section 92-1 to 92-13
Idaho	Section 67-2340 to 67-2347	Section 9-301 to 9-302
Illinois	Chapter 102, Section 41-46	Ch. 116, Sect. 201 to 211
Indiana	Section 5-14-1.5-5 to 1.5-7	Section 5-14-3-1 to 5-14-3-9
Iowa	Section 28A.1 to 28A.9	Section 68A to 68A.9
Kansas	Section 75-4317 to 75-4320a	Section 45-205 to 45-213
Kentucky	Section 61.805 to 61.845	Section 61.870 to 61.884
Louisiana	Section 42:4.1 to 42:4.12	Section 44:1 to 44:37
Maine	Title 1, Sect. 401 to 410	Title 1, Sect. 401 to 410
Maryland	Art. 76A, Sect. 1-6	Art. 76A, Sect. 7-15
Massachusetts	C 30A, Sect. 11A-11A1/2	C.66, Sect. 10-18
Michigan	Section 4.1800(11) to (23)	Subsection 4.1801(1) to (13a)
Minnesota	Section 471.705	Section13.01 to 13.87
Mississippi	Section 25-41-1 to 25-41-7	Section 25-61-1 to 25-61-17
Missouri	Section 610.010 to 610.120	Section 610.010 to 610.120
Montana	Section 2-3-201 *	Section2-6-103 *
Nebraska	Section 84-1409 to 1414	Section 84-712 to 84-712-09
Nevada	Section 241.010 to 241.040	Section 239.005 to 239.330
New Hampshire	Section 91-A:1 to 91-A:8	Section 91-A:1 to 91-A:8
New Jersey	Section 10:4-6 to 10:4-21	Section 47:1A-1 to 47:1A-4
New Mexico	Section 10-15-1 to 10-15-4	Section 14-2-1 to 14-2-3
New York	Section 95 to 106 **	Section 84 to 90 **
North Carolina	Section 143-318.9 to .16	Section 132-1 to 132-9
North Dakota	Section 44-04-19 to 44-04-21	Section 44-04-18 ***
Ohio	Section 121.22 (p. 1982)	Section 149.43 to 149.43.
Oklahoma	Title 25, Sect. 301 to 314	Title 51, Sect. 24
Oregon	Section 192.610 to 192.690	Section 192-410
Pennsylvania	Title 65, Sect. 261 to 269	Title 65, Sect. 66.1 to 66.4
Rhode Island	Section 42-46-1 to 42-46-10	Section 38-2-1 to 38-2-12
South Carolina	Section 30-4-10 to 30-4-110	Section 30-4-10 to 30-4-110

TABLE 2
OPEN MEETING AND RECORDS STATUTES

STATES	OPEN MEETING LAW STATUTE CITATION	OPEN RECORDS LAW STATUTE CITATION
South Dakota	Section 1-25-4	Section 1-27-1 to 1-27-19
Tennessee	Code 8-44-101 to 8-44-106	Section 10-7-501 to 10-7-509
Texas	Art. 6252-17	Art. 6252-17a
Utah	Section 52-4-10 to 52-4-9	Section 63-2-66
Vermont	Title 1, Sect. 311 to 315	Title 1, Sect. 315 to 320
Virginia	Section 2.1-341 to 2.1-346.1	Section 2.1-341 to 2.1-346.1
Washington	Section 42.30.010 to .920	Section 42.17.250 to .340
West Virginia	Section 6-9A-1	Section 29B-1-1 to 29B-1-6
Wisconsin	Section 19.81 to 19.98	Section 19.31 to 19.39
Wyoming	Section 16-4-401 to 16-4-407	Section 16-4-201 to 16-4-205

All citations are for general state codes unless otherwise noted.

* Also Article 2, Section 9 of the 1972 State Constitution.
** New York Public Officers Code.
*** Also Article XI, Section 6 of the State Constitution.

SOURCE: Council of State Governments, Backgrounder "Government in the Sunshine," (Lexington, Kentucky), June 1986.

TABLE 3
OPEN MEETING AND RECORDS STATUTES

STATES	NO EXPLICIT EXEMPTIONS	OPEN COMMITTEE MEETINGS	SPECIFIC CRIMINAL PENALTIES	INCLUDES INFORMAL MEETINGS	OPEN MEETING WITH OR WITHOUT QUORUM	REQUIRED FOR PERSONNEL MATTERS	ATTORNEY GENERAL INTERPRETATION	REVIEWED BY STATE COURT
Alabama	x		x	x				
Alaska						x	a	a
Arizona			x			x		
Arkansas	x		x	x			x	x
California			x				x	x
Colorado	x	x	x	x	x		x	
Connecticut			x				x	
Delaware								
Florida			x	x	x	x	x	x
Georgia		x					x	x
Hawaii							x	
Idaho			x					x
Illinois				x	x			
Indiana	x							
Iowa	x			x			x	x
Kansas			x	x	x		x	
Kentucky				x				
Louisiana			x			x	x	
Maine	x						x	x
Maryland				x				
Massachusetts						x	x	x
Michigan			x	x	x	x		x
Minnesota				x		x	x	x
Mississippi								
Missouri	x			x				x
Montana	x					x	x	x
Nebraska			x	x		x		
Nevada			x			x	x	
New Hampshire							x	x
New Jersey							x	x

TABLE 3
OPEN MEETING AND RECORDS STATUTES

STATES	NO EXPLICIT EXEMPTIONS	OPEN COMMITTEE MEETINGS	SPECIFIC CRIMINAL PENALTIES	INCLUDES INFORMAL MEETINGS	OPEN MEETING WITH OR WITHOUT QUORUM	REQUIRED FOR PERSONNEL MATTERS	ATTORNEY GENERAL INTERPRETATION	REVIEWED BY STATE COURT
New Mexico	x		x				x	x
New York				x				
North Carolina				x				
North Dakota			x	x			x	
Ohio	x				x		x	x
Oklahoma			x	x				
Oregon				x			x	
Pennsylvania	x						x	x
Rhode Island						x		
South Carolina	x	x	x	x			x	x
South Dakota	x	x	x				x	
Tennessee	x			x	x	x	x	x
Texas			x				x	x
Utah	x					x	x	x
Vermont			x				x	x
Virginia	x			x	x			
Washington								
West Virginia			x					x
Wisconsin							x	x
Wyoming								x

a--occurring at this time

SOURCE: Council of State Governments, Backgrounder "Government in the Sunshine," (Lexington, Kentucky), June 1986.

Table 4
Summary of Provisions of State Open Meeting and Information Access Laws

States Which Have no Public Meeting Requirement

Alabama Mississippi South Dakota

States Where Actions are Void if Open Meeting Law is not Followed

Alaska	Illinois	Michigan	Oklahoma
Arizona	Indiana	Montana	Oregon
Arkansas	Iowa	Nebraska	Pennsylvania
Colorado	Kansas	New Hamshire	Tennessee
Connecticut	Kentucky	New Jersey	Utah
Hawaii	Louisiana	New Mexico	Virginia
Florida	Maine	New York	West Virginia
Georgia	Maryland	North Dakota	Wisconsin
Idaho	Masschusetts	Ohio	Wyoming

States Where Working Papers and Records are not Open to the Public

Arkansas	Maine	Texas
California	Massachusetts	Vermont
Connecticut	Michigan	Virginia
Illinois	Oregon	Washington
Indiana	Rhode Island	West Virginia
Kansas	South Carolina	Wyoming
Kentucky		

States Where Correspondence of State Officials is not Open

Arkansas:	governor, legislators, supreme court justices, and attorney general
California:	governor and staff
Louisiana:	records in custody of governor
Minnesota:	correspondence between individual and elected official
Nebraska:	legislators
Rhode Island:	all elected officials
South Carolina:	general assembly and staff
Virginia:	legislators, governors, lieutenant governors, attorney general and chief executive officer of any political subdivision

States Where Preliminary Drafts of Audit Reports are Closed

Arizona Texas

Source: Council of State Governments, Backgrounder "Government in the Sunshine", (Lexington, Kentucky) June 1986, p.7.

General assembly, of senate and house of delegates. Md III 1; Va IV 40.

Legislative assembly, of senate and house of representatives. Mont V 1; Ore IV 1.

Words, "legislative assembly shall provide," or similar or equivalent words in constitution or amendment, not to be construed to grant to legislature exclusive power of law-making or limit initiative and referendum powers reserved by people. Ore II 18.

LOBBYING

To enact laws and adopt rules prohibiting, on floor of either house. Ariz XXII 19.

Declared crime; legislature to enforce provision by suitable penalties. Ga I Sec II 5.

Defined and declared felony; legislature to provide by law for punishment. Person compellable to testify in lawful investigation or judicial proceedings against person charged with; testimony not to be withheld on ground that it may incriminate or subject to public infamy but not to be used against him in judicial proceedings, except for perjury in giving. Cal IV 35.

No state or county official, during term, to accept directly or indirectly fee, office, appointment, employment, reward, thing of value, or of personal advantage, or promise thereof, to lobby for or against pending measure, or to give or withhold his influence to secure passage or defeat. Ala IV 101.

Legislature to regulate. Alas II 12.

MEMBERS

Appointment of

Appointment to office prohibited, *see below, this title,* QUALIFICATIONS OF MEMBERS—DUAL OFFICE HOLDING.

Prohibited. Ky 152.

May be appointed to serve on any commission, committee or other body created by legislature to assist in legislative function. NJ IV Sec V 2.

Apportionment

See above, this title, APPORTIONMENT OF MEMBERS.

Arrest, Privilege From

See below, this subtitle, CIVIL PROCESS, PRIVILEGE FROM.

General Rule

During session. Va IV 48.

During session and in going and returning. Del II 13; Ida III 7; Ill IV 14; Iowa III 11; Kan II 22; La III 13; Mo IV Pt III 8; Ohio II 12; Okla V 22; Ore IV 9; SD III 11; Tenn II 13.

During session and in going and returning, allowing one day for every twenty miles such member may reside from place at which legislature is convened. Tex III 14.

During attendance at sessions and in going and returning. Ala IV 56; Alas II 6; Ark V 15; Colo V 16; Ga III Sec VII 3; H III 8; Ind IV 8; Ky 43; Minn IV 8; Mont V 15; NJ IV Sec IV 9; NM IV 13; ND II 42; Pa II 15; Wyo III 16.

During sessions and two days before and after. RI IV 5.

During session and for ten days before and after same. W Va VI 17.

To be protected in person and estate during attendance, going and returning, and ten days before and after session. SC III 14.

During session and for ten days next before commencement thereof. Ariz IV Pt II 6; Wash II 16.

During session, for fifteen days next preceding each session and in returning therefrom. Utah VI 8.

During session and for fifteen days next before commencement and after termination thereof. Cal IV 11; Mich V 8; Miss IV 48; Mo III 19; Nebr III 15; Wis IV 15.

Exceptions

Treason. Ala IV 56; Ark V 15; Ariz IV Pt II 6; Cal IV 11; Colo V 16; Del II 13; Ga III Sec VII 3; Ida III 7; Ill IV 14; Ind IV 8; Iowa III 11; Ky 43; La III 13; Me IV Pt III 8; Mich V 8; Minn IV 8; Miss IV 48; Mo III 19; Mont V 15; Nebr III 15; NJ IV Sec IV 9; NM IV 13; ND II 42; Ohio II 12; Okla V 22; Ore IV 9; Pa II 15; SC III 14; SD III 11; Tenn II 13; Tex III 14; Utah VI 8; Va IV 48; Wash II 16; W Va VI 17; Wis IV 15; Wyo III 16.

Felony. Ala IV 56; Alas II 6; Ark V 15; Ariz IV Pt II 6; Cal IV 11; Colo V 16; Del II 13; Ga III Sec VII 3; H III 8; Ida III 7; Ill IV 14; Ind IV 8; Iowa III 11; Kan II 22; Ky 43; La III 13; Me IV Pt III 8; Mich V 8; Minn IV 8; Miss IV 48; Mo III 19; Mont V 15; Nebr III 15; NM IV 13; ND II 42; Ohio II 12; Okla V 22; Ore IV 9; Pa II 15; SC III 14; SD III 11; Tenn II 13; Tex III 14; Utah VI 8; Va IV 48; Wash II 16; W Va VI 17; Wis IV 15; Wyo III 16.

Breach of peace. Ala IV 56; Alas II 6; Ariz IV Pt II 6; Cal IV 11; Del II 13; Ga III Sec VII 3; H III 8; Ida III 7; Ill IV 14; Ind IV 8; Iowa III 11; Kan II 22; Ky 43; La III 13; Me IV Pt III 8; Mich V 8; Minn IV 8; Miss IV 48; Mo III 19; Mont V 15; Nebr III 15; NM IV 13; Ohio II 12; Okla V 22; Ore IV 9; SC III 14; SD III 11; Tenn II 13; Tex III 14; Utah VI 8; Va IV 48; Wash II 16; W Va VI 17; Wis IV 15; Wyo III 16.

LEGISLATURE (Cont'd)
MEMBERS (Cont'd)
Arrest, Privilege From (Cont'd)
Exceptions (Cont'd)

High misdemeanor. NJ IV Sec IV 9.
Breach of surety of peace. Ark V 15; Colo V 10; Ky 43; Pa II 15.
Violation of oath of office. Ala IV 56; Colo V 10; Mont V 15; Pa II 15; Wyo III 16.
Larceny. Ga III Sec VII 3.
Theft. Miss IV 48.

Attendance at Sessions, Compelling

See below, this title, QUORUM—POWERS OF SMALLER NUMBER.

Books Not to Be Purchased For

No book, or other printed matter, not appertaining to business of session, to be purchased or subscribed for at public expense for use of members, or distributed among them. Md III 10.

Entitled to one copy of laws, journal and documents of legislature of which a member; not to receive at state expense, books, newspapers or perquisites not expressly authorized by constitution. Mich V 9.

Bribery

See below, this subtitle, CORRUPT SOLICITATION OF; as disqualification, *see below, this title,* QUALIFICATIONS OF MEMBERS—BRIBERY; power to protect members from offers of bribery, *see below, this subtitle,* PROTECTION OF.

In General

Defined; to be punished as provided by law. Ala IV 79, 80; Del XI 22.

Defined; to be felony and punishable as such. Ark V 35.

Defined; to be punished according to law and member guilty thereof to forfeit office. Tex XVI 41.

Bribery and solicitation of bribery defined; to be punished by fine or imprisonment. NM IV 39, 40.

Legislature to provide by law for punishment of; conviction to disfranchise forever and disqualify from holding office of trust or profit in state. Md III 50.

Defined; conviction to disqualify from holding office or position of trust or profit in state, in addition to punishment provided by law. SD III 28.

Same; also to disqualify from position of honor. Pa III 29, 30, 32; Wash II 30; Wyo III 43, 44.

Defined and declared to be felony; member convicted of, in addition to punishment as provided by law, to be disfranchised and forever disqualified from holding any office or public trust. Cal IV 35.

Bribery and solicitation of bribery defined; person convicted of either to be expelled, if member, and to be ineligible thereafter to legislature and liable to such further penalty as prescribed by law. ND II 40.

Bribery and solicitation of bribery defined; member convicted of either by house of which member, to forfeit office. La III 30.

Bribery and solicitation of bribery defined; member guilty of either, to be expelled and thereafter ineligible to legislature and liable to further penalty as prescribed by law. Guilty person not member to be punished as provided by law. Colo V 40, 41, XII 6; Mont V 41, 42.

Defined; person convicted thereof, by court or by house of which a member or officer, to be disqualified forever from holding any office, state, parochial or municipal, and to be forever ineligible to legislature; provision not to prevent legislature from enacting additional penalty. La XIX 12.

To provide for punishment by imprisonment of person bribing or attempting to bribe member, or member demanding or receiving bribe; person convicted of, to be disqualified forever from holding office of honor, trust or profit in state. W Va VI 45.

Each house during session may punish any person offering or giving bribe to member, or attempting by corrupt means to advise or influence member to cast or withhold vote; punishment and procedure to be prescribed by law, but imprisonment not to extend beyond session. Ky 39.

Witnesses

Any person compellable to testify in lawful investigation or judicial proceeding against person charged with; testimony not to be withheld on ground that it may incriminate or subject to public infamy, but not to be used against him in judicial proceeding, except for perjury in giving it. Cal IV 35; La XIX 13; NM IV 41; Pa III 32; SD III 28; Wash II 30; Wyo III 44.

Any person may be compelled by law to testify, but to be exempt from trial and punishment for offenses of which guilty and concerning which compelled to testify. W Va VI 45.

To provide by law for compelling any person to testify in bribery proceedings, but such person to be exempt from trial and punishment for offense of which guilty. Md III 50.

Civil Process, Privilege From

See above, this subtitle, ARREST, PRIVILEGE FROM.

Not to be arrested or held for bail on mesne process during, going to or returning from attendance upon sessions. NH II 21.

Not to be arrested or held on mesne process during session or in going to or returning from same. Mass I Sec III 10, 11.

Person to be exempt from attachment in any civil action during session and two days before commencement and after termination thereof; process served contrary hereto to be void. RI IV 5.

Privileged from arrest on, during session and for four days before commencement and after termination thereof. Conn III 13.

Not liable to, during session nor during ten days next before commencement thereof. Ida III 7.

Not subject to, during session nor for fifteen days next before commencement thereof. Ariz IV Pt II 6; Ind IV 8; Ore IV 9; Wash II 16.

Not subject to service of, during session or for fifteen days previous to its commencement. Kan II 22.

Privileged from arrest on, during session and for fifteen days next before commencement. Nev IV 11.

Not subject to, during session and for fifteen days next before commencement and after termination thereof. Cal IV 11; Mich V 8; Wis IV 15.

Not subject to arrest under, during sessions nor for fifteen days next before commencement or after termination thereof. Va IV 48.

To be protected in person and estate during attendance in going to and returning from legislature and ten days before and after session. SC III 14.

Attending, going to or returning from legislative session, not subject to civil process. Alas II 6.

Classification of Senators

Senate to be so classified that one-half of number, as nearly as practicable, elected every two years. Colo V 5; Iowa III 6; Mont V 4; Nev XVII 9, 10; NJ IV Sec II 2; ND II 30; SC III 8.

First senators divided in two classes with respect to term of office so that thereafter one-half of senate, as nearly as practicable, elected biennially. Ark V 3; Cal IV 5; Del Sched 3; Fla VII 2; Ill IV 6; Ky 31; Okla V 9; Pa Sched 3, 4; Wash II 6; W Va VI 3; Wis IV 5; Wyo III 2.

First senators divided into two classes with respect to term of office, so that thereafter one-half of senate, as nearly as possible, chosen biennially. If number increased, new senators to be annexed by lot to one of classes as equally as possible. Ind IV 3; Ore IV 4; Utah VI 4.

First senators divided into two classes: first class to consist of specified number from each district, elected with highest number of votes and to serve until third general election; remaining members constitute second class, to serve until second general election. H XVI 15.

New senate to be chosen after every apportionment and senators then elected divided by lot into two classes, one class with term of two years and other with term of four years, so that thereafter half of senate chosen biennially. Tex III 3.

One-half of senators elected every two years; specified plan for initiating overlapping terms. Alas II 3, XV 10.

One-half elected every two years for four-year overlapping terms, except senators elected to fill partial senatorial apportionment ratio elected for two years on ten-year apportionment plan. Ohio II 2, XI 6a.

Compensation

President of Senate, *see below, this title,* PRESIDENT OF SENATE — COMPENSATION; speaker, *see below, this title,* SPEAKER — COMPENSATION.

In General

As provided by law. Ind IV 20; Iowa III 25; Minn IV 7; Miss IV 46; Nev IV 33; NJ IV Sec IV 7, 8.

As provided by law, but no legislature to fix its own compensation. Mont V 5; Wyo III 6.

Fixed compensation to be prescribed by law and no other allowance or perquisites either in payment of postage or otherwise. Ohio II 31.

Such salary and allowances as prescribed by law. Until otherwise provided, to receive $2500 for each general session and $1500 for each budget session. H III 10, XVI 17.

Such salary and mileage for regular and special sessions as fixed by law and no other compensation whatever, whether for service upon committee or otherwise. Pa II 8.

No pay or perquisites other than salary and mileage. Nebr III 7.

No pay or perquisites except *per diem* and mileage. SD III 6.

No other compensation for services except salary, usual expenses of transportation, stationery allowance. Del II 15.

No additional compensation for service upon recess committee, except committee appointed to examine work of statutory revision commission. Mass Am LXV.

No legislator to receive additional compensation for services rendered in connection with decennial statutory revision. Mo III 34.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M January 26, 1989

SUBJECT: Open meetings: the laws from other states (SJR 1)

TO: Senator Arliss Sturgulewski

FROM: Richard A. Bradley
Legislative Counsel

McKie Campbell asked me to provide you with a study that I did last year on the laws of the other states that have open meetings. I used in my review a listing of such laws that was initially prepared by the House Research Agency (that I regretfully seem unable to find a copy of; I assume one is available from them).

Initially, I reviewed the constitutions and laws of Oregon and California in some detail in the context of the question whether either state would void a law for a violation of open meeting requirements.

A brief summary of the provisions would be that neither state has any provision voiding laws for violations of the open meetings laws of those states.

Nor do the constitutions of those states lead to that result.

The California Constitution provides that the "proceedings of each house and the committees thereof shall be public except as provided by statute or concurrent resolution, when such resolution is adopted by two-thirds vote of the members of each house, . . ." Art. IV, sec. 7(c), California Constitution.

The enabling legislation at Secs. 11120 - 11131 of the California (Government) Code does not apply to the legislature but rather only to state executive branch agencies.

And I believe that no provision of that law provides that action taken in violation of it is void. The only remedies offered in those sections of the California law is the authorization of litigation seeking mandamus or injunctive relief (Sec. 11130), costs and attorney fees (Sec. 11130.5), and a provision making the conduct a misdemeanor (Sec. 11130.7).

California does, however, have an open meetings law specifically concerned with the legislature. See Secs. 9027 - 9031, California (Government) Code.

The legislative formulation of art. IV, sec. 7(c), quoted above, provides that all "meetings of the Assembly and Senate and the committees and subcommittees thereof, and any conference committee, shall be open and public and all the proceedings shall be conducted openly so that the public may remain informed, except as otherwise provided in this article. All meetings of any conference committee shall be open to press representatives accredited by the Joint Rules Committee." Sec. 9027.

Two sanctions are stated: (1) a knowing violation is a misdemeanor. Sec. 9030; and (2) a mandamus or injunctive action for declaratory relief may be filed. Sec. 9031.

The Oregon laws are consistent.

The Oregon Constitution provides that the "deliberations of each house, of committees of each house or joint committees and of committees of the whole, shall be open." Art. IV, sec. 14, Oregon Constitution. The section also directs each house to adopt rules to implement the section and both houses are directed to adopt joint rules relating to joint legislative activity.

ORS Secs. 192.610 - 192.690 are ambiguous as to whether they apply to legislative Acts or legislative proceedings. I can find no provision within these sections that uses terms to be expected in laws applying to the legislature. But I can find no specific provisions that do apply to the legislature; since we do not have access to the legislative rules, that may well be the the location of those provisions.

Sec. 192.680 establishes the policy that the court may order equitable relief as it considers appropriate. The law also provides that

> A decision shall not be voided if other equitable relief is available. The court may order payment to a successful plaintiff in a suit brought under this section of reasonable attorney fees at trial and on appeal, by the governing body, or public body of which it is a part or to which it reports. ORS, sec. 192.-680(1).

This remedy may be offered because it would be very unlikely that a plaintiff could prove "actual damages" for a violation of the law.

The law also provides that if the violation was a "result of wilful misconduct by any member or members of the governing body, that member or members shall be jointly and severally liable to the governing body . . . for the amount paid under subsection (1)."

Finally, the Oregon law provides that "the provisions of this section shall be the exclusive remedy for an alleged violation of ORS 192.610 - 192.690."

I believe it is accurate to note that neither California nor Oregon will void a legislative Act for a violation of their open meetings laws. The laws also suggest that sanctions against members whose conduct is wilful is a proper recourse.

In addition, I have reviewed about half of the laws of the other states. Since some kind of pattern appears in the laws of the states that I did review, I discontinued the review. Let me make some observations about the laws and then offer the individual analyses of the states from Alabama through Missouri.

First, and I think this is significant, I found no case where an Act of a legislature was avoided. It appears that no action was avoided (or challenged until Abood) where the violation was based only on the actions of a committee or subcommittee of the legislative body.

There is some logic to this point. While committee recommendations are useful, a member may vote for or against final passage based on or in spite of recommendations of a committee. What one committee does may be disregarded by a subsequent committee or used for entirely different reasons.

It should not follow that the action by a committee vitiates the final legislative action.

In probably every state, state constitutions will require votes on final enactment to be public. Whether a disregard of committee action that violates open meeting concepts (if final action is open) is a serious loophole or an unfortunate expectation may be debatable but it appears to explain why the application of open meeting concepts to legislative action does not result in the avoidance of the final legislative action. The legislature should have the power to cure the defects in legislation caused by a committee of the legislature.

While the senate and the house each seem to have their own different ideas about the amount of debate required for adoption, it is quite different for a court to order the legislature to engage in "substantial, de novo, independent and public reconsideration of those substantive matters previously discussed in private." That remedy was requested in Abood v. League of Women Voters of Alaska, 743 P.2d 333, 334 (Alaska 1987).

The amount of debate required to cure a violation is the kind of question that the courts would be required to address if a violation by a committee is permitted to taint the final legislative action fatally. If I am correct that only violations by the enacting body will cause action to be void, the cure for violations is not a problem since no violation by the legislature itself will (or can) occur.

Finally, an analysis of state laws. While it has been suggested (by the House Research Agency report) that each state has an open meeting law, it is far from true that the citations offered prove that the legislatures have uniformly subjected themselves to such laws. And let me note also that this study was done 10 months ago; it might be a little dated.

Alabama. I could find no laws at the citation suggested in the HR report. Title 13 has been repealed. No entries in the index for the topic.

Arizona. Sec. 38.431. Applies to the legislature. No case in annotation appears to have challenged legislative violations. Only applies when a quorum is present according to AG opinion. Court may impose a fine of not to exceed $500.

Sec. 431.07. Public body may not expend public money to defend action under certain circumstances. Sec. 431.07. Either house of legislature may exempt itself by adoption of rule or procedure. Sec. 431.08(B). Does not apply to conference committees of legislature or any caucus. Sec. 431.08(A); conference committees shall nonetheless be open.

Arkansas. Citation incorrect: see A.C.A. 25.19.101 et seq. Open meetings section does not apply to the legislature. Sec. 25.19.106. Misdemeanor penalty for violations of $200 or 30 days (sec. 25.29.104). Action taken not void unless adopted at a public meeting. Sec. 25.19.106.

California. Citation given (sec. 11120 et seq., Cal. Gov't Code) applies only to executive branch agencies. See above for comments on sections applicable to the legislature.

Colorado. C.R.S. sec. 24.6.401 et seq. Applies to the legislature. Sec. 24.6.402. Does not apply to "chance meeting or social gathering at which discussion of public business is not the central purpose." Sec. 24.6.402(2.1). Provisions on invalidity may not apply to the legislature: "(4) No resolution, rule, regulation, ordinance, or formal action of a board, committee, commission, or other policy-making or rule-making body shall be valid unless taken or made at a meeting that meets the requirements . . ." Note that while it applies to a committee in the legislature, a committee is not a policy making body.

Connecticut. G.S.C. sec. 1.21. Appears to apply to the legislature. Sec. 1.21(a). Establishes notice; has no provision explicitly establishing application to the legislature or providing for the implications of violations (even as to executive branch agencies).

Delaware. 29 D.C.A. sec. 10001 et seq. Includes legislature. Sec. 10002. "Any action taken at a meeting in violation of this chapter may be voided by the Court of Chancery" within 60 days of notice of the action but not more than 6 months from the action. Sec. 10005(a). No annotations regarding violations by the legislature.

Florida. Ch. 286, F.S. at 011. Does not apply to the legislature. Sec. 286.011(1). Did not determine whether other law applies to the legislature.

Georgia. O.C.G. sec 50-14-1 et seq. Not applicable to the legislature.

Hawaii. H.R.S. sec. 92.3. Does not apply to the legislature. Sec. 92.10; rather, will be subject to rules adopted by the legislature (I have not found such rules). Executive action voidable on "proof of willful violation." Sec. 92.-11.

Idaho. I.C. sec. 67-2340 et seq. General sections do not apply to the legislature. Sec. 2341. Open legislative meetings required. Sec. 2346. Curiously, there is no statutory authorization for any executive session by legislative committees: "All meeting . . . shall be open at all times"; I suggest the section cannot be taken seriously. Action taken at a meeting that violates the sections is null and void. No cases construing statute in context of suit against legislature for its violation.

Illinois. 102 Ill. A.S. sec. 41 et seq. Includes "legislative . . . bodies of the state . . . except the General Assembly and committees or commissions thereof." Sec. 41.02. Did not find any specific sections applying to the legislature.

Indiana. B.I.S.A. sec. 5-15-1.5-1. Appears to apply to the legislature. Sec. 5-14-1.5-2(a). Notice requirement do not apply to the legislature. Sec. 5-14-1.5-5(g). Citizen may enjoin action taken at an executive session or to declare void action in violation of notice requirements (not applicable to legislature). Sec. 5-14-1.5-7(a). Court may award costs and attorney fees if action was knowing and intentional. Sec. 5-14 - 1.5-7(f).

Iowa. The correct citation is chapter 21 in the 1987 code. The chapter does not apply to the legislature. Remedies include assessment of fines of $100 to $500 for participants; no fines for a person who voted against the violating meeting or acted in good faith or in reliance of legal advice. Sec. 21.6(3). Costs and attorney fees for prevailing party who establishes the violation. Sec. 21.6(3). Voids the action taken in violation if the case is brought within six months of the action on a determination that the public interest in the enforcement of the open meeting policy outweighs the public interest in sustaining the validity of the action taken; doesn't apply to an action regarding the issuance of bonds or other indebtedness of a governmental body

if a public hearing, election, or public sale has been held. The court may remove an individual who has engaged in two prior violations in which damages were assessed during the member's term. May issue a mandatory injunction punishable by civil contempt. Ignorance is no defense.

Kansas. 75 K.S.A. sec. 4317 et seq. Appears to apply to the legislature. Sec. 4318. Violators subject to a $500 civil penalty. Any binding action taken in violation is voidable in an action brought by the attorney general or county attorney. Sec. 4320. Court may award costs and attorney fees. Exceptions for impeachment are made. Sec. 4318. One annotation says that there was no "authority for private individual to bring action to void acts performed in violation of open meetings law. Stoldt v. City of Toronto, 678 P.2d 153 (Kansas 1984). Unannounced gathering prior to official meeting violates the law. Coggins v. Public Employee Relations Board, 581 P.2d 817.

Kentucky. KRS 61.805. Appears to apply to the legislature. Sec. 61.805(2), but with some "exceptions": "committees of the general assembly other than standing committees". Sec. 61.810(9). Courts may enforce by injunction. Sec. 61.845. Curiously, though there are pages of annotations of opinions of the attorney general as well as court decisions, no case involves the legislature.

Louisiana. RS 42.5 is the law; a 1981 amendment deleted the language that exempted the legislature in those words but the words now used do not include the legislature. Sec. 42.4.2(2). A specific section authorizes closed or executive sessions of legislative houses and committees. Sec. 42.6.2. The law also exempts "chance meetings, social gatherings, or other gatherings at which only presentations are made to members of the legislature or members of either house thereof or of any committee or subcommittee if no vote or other action, including formal or informal polling of members, is taken." Sec. 42.6.2(C). The legislature is exempted from requirement applicable to executive agency that meetings for the year be announced at the beginning of the year. Sec. 42.7. Suits to void action must be filed within 60 days of the action.

Maine. 1 MRSA sec. 401 et seq. Applies to the legislature. Sec. 402.2. For violations of the policy: "If any body or agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official

action in an executive session, this action shall be illegal and the officials responsible shall be subject to the penalties hereinafter provided". I note that "Acts" are not included. The penalty is a class E crime, probably a misdemeanor. No case examines a challenge to a legislative enactment.

Maryland. 76A A.C.M., sec. 7 et seq., reorganized as 10 A.C.M., 501 et seq. in the 1984 edition. Regarding enforcement, the law says: . . . the court may declare void any final action taken at a meeting held in wilful violation of [the law] if the court finds no other remedy would be adequate under the circumstances. However, the action of a public body may not be voided because of the violation . . . by any other public body." Sec. 10- 510(a)(2); sec. 10-510(e) authorizes injunctions or other appropriate relief. The section specifically excludes actions appropriating public funds, levying taxes, or providing for the issuance of bonds, notes, or evidences of public obligation from the authority of the court to void actions. Sec. 10-510(a). No case examines a challenge to a legislative enactment.

Massachusetts. 30A M.G.L.A. sec. 11A. Does not apply to the general court (legislature) or the committees or recess committees of the general court. Sec. 11A.

Michigan. Michigan has a constitutional provision requiring open meeting unless the public welfare requires otherwise. Art. 4, sec. 20. The current citation to the general law is 15 M.C.L.A. sec 261 et seq. "Public body" is defined as "any state . . . legislative . . . body, including a . . . committee, subcommittee . . . empowered by the state constitution . . . to exercise governmental . . . authority . . . ." Sec. 15.262(a); under 15.262(d), "decision" includes a "vote . . . upon a . . . bill . . ." Attorney General opinions are consistent that committee action is covered. A reenactment complying with the act cures a prior enactment that was deficient; the effective date is on the reenactment. Sec. 15.270. No case addresses a challenge to a legislative enactment.

Minnesota. M.S. 471.705. Does not apply to the legislature.

Mississippi. Not reviewed.

Missouri. M.R.S., sec. 610.010 et seq. Applies to the legislature. Sec. 610.010(2). Violations include injunctive relief. Sec. 610.027(1). Civil fines of not more than $100 are authorized. Sec. 610.027(3). Actions may void the action on evidence that the governmental body violated the section "if the court finds under the facts of the particular case that the public interest in the enforcement of the policy . . . outweighs the public interest in sustaining the validity of the action taken at the closed meeting, record, or vote." Sec. 610.027(4). Injunctive relief is authorized. Sec. 610.030. No annotation applies a challenge to a legislative enactment.

If I may be of further assistance, please advise.

RAB:gc
G6/049

current statute

(8)

Article 6. Agency Meetings Public.

Section
310. Agency meetings public
312. State policy regarding meetings

Sec. 44.62.310. Agency meetings public. (a) All meetings of a legislative body, of a board of regents, or of an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money, are open to the public except as otherwise provided by this section. Except for meetings of a house of the legislature, attendance and participation at meetings by members of the public or by members of a body may be by teleconferencing. Agency materials that are to be considered at the meeting shall be made available at teleconference locations. Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. The vote at a meeting held by teleconference shall be taken by roll call. This section does not apply to any votes required to be taken to organize a public body described in this subsection.

(b) If excepted subjects are to be discussed at a meeting, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that come within the exceptions contained in (c) of this section shall be determined by a majority vote of the body. No subjects may be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. No action may be taken at the executive session.

(c) The following excepted subjects may be discussed in an executive session:

(1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the government unit;

(2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;

(3) matters which by law, municipal charter, or ordinance are required to be confidential.

(d) This section does not apply to

(1) judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding;

(2) juries;

(3) parole or pardon boards;

(4) meetings of a hospital medical staff; or

(5) meetings of the governing body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges or discipline.

(e) Reasonable public notice shall be given for all meetings required to be open under this section. The notice must include the date, time, and place of the meeting, and if the meeting is by teleconference the location of any teleconferencing facilities that will be used.

(f) Action taken contrary to this section is void. (§ 1 art VI (ch 1) ch 143 SLA 1959; am § 1 ch 48 SLA 1966; am § 1 ch 78 SLA 1968; am § 1 ch 7 SLA 1969; am §§ 1, 2 ch 98 SLA 1972; am § 2 ch 100 SLA 1972; am § 1 ch 189 SLA 1976; am §§ 2, 3 ch 54 SLA 1985)

Effect of amendments. — The 1985 amendment in subsection (a) added the second, third, and next-to-last sentences and in the last sentence substituted "a public body described" for "the bodies specified" and added the last sentence of subsection (e).

NOTES TO DECISIONS

"Meeting". — A private meeting between a quorum of the Anchorage Municipal Assembly and a developer to discuss in detail the developer's application for rezoning violated this section; a "meeting" for purposes of the Open Meetings Act includes every step of the deliberative and decision-making process when a governmental unit meets to transact public business. The rezoning ordinance later passed by the assembly that allowed a modified plan of development was therefore held void. Brookwood Area Homeowners Ass'n v. Municipality of Anchorage, Sup. Ct. Op. No. 2953 (File Nos. S-575, S-629), 702 P.2d 1317 (1985).

Findings. — There is nothing in the Administrative Procedure Act requiring a board to make any findings when exercising its quasi-legislative function, and therefore there is nothing in the act regulating the manner in which findings must be adopted or approved. State v. Hebert, Ct. App. Op. No. 748 (File A-1743), P.2d (1987).

Legislature's alleged violation of Open Meetings Act held nonjusticiable. — The Open Meetings Act, as it applies to the legislature, like the legislature's Uniform Rule 22, merely establishes a rule of procedure concerning how the legislature has decided to conduct its business; a failure to follow a rule of procedure is not the subject matter of judicial inquiry where there are no allegations that the legislature, acting pursuant to or in violation of one of its rules of procedure, has infringed on the rights of a third person not a member of a legislature or has ignored constitutional restraints or violated fundamental rights. Abood v. League of Women Voters, Sup. Ct. Op. No. 3230 (File Nos. S-1831, S-1841, S-1957), 743 P.2d 333 (1987).

Applied in Meiners v. Bering Strait School Dist., Sup. Ct. Op. No. 2857 (File Nos. S-125, S-140), 687 P.2d 287 (1984); Abood v. Gorsuch, Sup. Ct. Op. No. 2958 (File No. S-706), 703 P.2d 1158 (1985).

Sec. 44.62.312. State policy regarding meetings. (a) It is the policy of the state that

(1) the governmental units mentioned in AS 44.62.310(a) exist to aid in the conduct of the people's business;

(2) it is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;

(3) the people of this state do not yield their sovereignty to the agencies which serve them;

(4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;

(5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created;

(6) the use of teleconferencing under this chapter is for the convenience of the parties, the public, and the governmental units conducting the meetings.

(b) AS 44.62.310(c)(1) shall be construed narrowly in order to effectuate the policy stated in (a) of this section and avoid unnecessary executive sessions. (§ 3 ch 98 SLA 1972; am § 4 ch 54 SLA 1985)

Effect of amendments. — The 1985 amendment added paragraph (6) of subsection (a).

NOTES TO DECISIONS

Quoted in Brookwood Area Homeowners Ass'n v. Municipality of Anchorage, Sup. Ct. Op. No. 2953 (File Nos. S-575, S-629), 702 P.2d 1317 (1985).

Article 7. Legislative Review of Rules.

Sec. 44.62.320. Legislative annulment of regulations and review.

Editor's notes. — The Alaska Const., art. II, § 22 amendment proposal that was mentioned in the notes to decisions was defeated in the November, 1984 election.

Article 8. Administrative Adjudication.

Sec. 44.62.330. Application of AS 44.62.330 — 44.62.630.

(a) The procedure of the state boards, commissions, and officers listed in this subsection or of their successors by reorganization under the constitution shall be conducted under AS 44.62.330 — 44.62.630. This procedure, including, but not limited to, accusations and statements of issues, service, notice and time and place of hearing, subpoenas, depositions, matters concerning evidence and decisions, conduct of hearing, judicial review and scope of judicial review, continuances, reconsideration, reinstatement or reduction of penalty, contempt, mail vote, oaths, impartiality, and similar matters shall be governed by this chapter, notwithstanding similar provisions in the statutes dealing with the state boards, commissions, and officers listed. Where indi-

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joint committee which acts between legislative sessions constitutes a subcommittee of the Legislative Council for administrative purposes. A special or joint committee may expend money only in accordance with an appropriation made for the work of the committee.

(d) A committee may not be established unless authorized by law or by the Uniform Rules.

Uniform Rule #22

OPEN AND EXECUTIVE SESSIONS

RULE 22. OPEN AND EXECUTIVE SESSIONS. (a) All meetings of a legislative body are open to all legislators, whether or not they are members of the particular legislative body that is meeting, and to the general public except as provided in (b) of this rule.

(b) A legislative body may call an executive session at which members of the general public may be excluded for the following reasons:

(1) discussion of matters, the immediate knowledge of which would adversely affect the finances of a government unit;

(2) discussion of subjects that tend to prejudice the reputation and character of a person;

(3) discussion of a matter that may, by law, be required to be confidential.

(c) When a legislative body desires to call an executive session in accordance with (b) of this rule, the body shall first convene as a public meeting and the question of holding an executive session shall be determined by a majority vote of the members present.

(d) The provisions of this rule may not be interpreted as permitting the exclusion of a legislator from an executive session, whether or not the legislator is a member of the body that is meeting. A legislator not a member of the body holding an executive session shall, however, be subject to the same rules of confidentiality and decorum as pertain to regular members of the body.

COMMITTEE MEETINGS

RULE 23. COMMITTEE MEETINGS. (a) Written notice of the time, place and subject matter of all meetings of standing, special, and joint committees during a week shall be provided by the person who chairs the committee to the chief clerk or secretary by 4:00 p.m. on the preceding Thursday. The person who chairs the committee to which a bill or resolution is first referred shall provide to the chief clerk or secretary written notice of the time and place of the first public hearing on the bill or resolution at least five days before the hearing. However, this requirement may be waived by motion of the person who chairs the committee to which a bill or resolution is first referred if concurred in by majority vote of the full membership of the house. The chief clerk or secretary shall publish and distribute copies of the weekly schedule of committee meetings and of the five-day notice of hearing.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

RODOEY STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

MEMORANDUM March 9, 1989

SUBJECT: Open meetings: "wilful" v. "intentional" (CSSJR 1( ))

TO: Senator Pat Rodey

FROM: Richard A. Bradley
Legislative Counsel

You have requested a committee substitute sponsor blank that would change "wilful" in Sec. 24(d) to "intentional". It is enclosed.

You also ask that we comment on the desirability of the change.

The criminal code [see AS 11.81.900(a)(1)] uses the word "intentionally" to describe conduct "when the person's conscious objective is to cause that result" and the word is probably a synonym for the "wilful" that was used in SJR 1; in this context, "intentionally" is contrasted with "knowingly", "recklessly", and "criminally negligent" to describe other degrees of knowing conduct.

SJR 1 does not propose a rule that has any analogy to criminal laws; the provisions of Sec. 24(d) specifically provide for a civil fine.

Having said that, I do not believe that I have much to add. I do not believe that the office has a preference for "intentional" over "wilful" in this context.

The Alaska Supreme Court has suggested that the word "wilful" is not a term of art, North State Tel. Co. v. Alaska Pub. Util. Comm'n, 522 P.2d 711 (1974), and its meanings will vary according to the context.

The word "wilful" often denotes an act that was done voluntarily, knowingly, or permissively-- as distinguished from the accidental act or the act that occurs beyond the

control of an individual. The court does suggest in the North State case that in the context of the criminal codes generally, "wilful" conduct carries a connotation of a bad purpose; the court agrees that it does not have that meaning where the act in question is viewed in a civil context and is not per se wrong (but merely prohibited).

In my view, "intentional" works well if your intent is to penalize only those who facilitate the violation. On the other hand, if you wish to penalize all those who participate in a closed meeting, knowing that the meeting violates open meeting requirements "wilful" might be better..

RAB:lmb:kb
L7/028

Enclosure

6-0013H
Bradley
3/9/89

Original sponsors: Sturgulewski, Fischer, Kerttula, et al.

IN THE SENATE

CS FOR SENATE JOINT RESOLUTION NO. 1 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

Proposing an amendment to the Constitution of the State of Alaska relating to open meetings.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. Article I, Constitution of the State of Alaska, is amended by adding a new section to read:

SECTION 24. MEETINGS OPEN. (a) Except as provided in (b) of this section, private and substantive discussions or debates on legislation under its jurisdiction by a quorum of a house of the legislature or of a committee are prohibited.

(b) The legislature or a committee of the legislature may meet in executive sessions authorized by law.

(c) A court may not prescribe rules or procedures for the conduct of legislative business or invalidate legislation because of a violation of this section.

(d) A court may impose a civil fine upon a member of the legislature for an intentional violation of this section and may impose other sanctions authorized by law.

(e) The legislature may implement this section.

* Sec. 2. INTENT. (a) The purpose of the amendment to art. I, Constitution of the State of Alaska, proposed in sec. 1 of this resolution is to make openness in government the rule and secrecy the exception. The amendment ensures that the public is not excluded during the substantive deliberative and decision-making stages of the budgetary and lawmaking process.

(b) This amendment provides a basis for judicial enforcement of the

existing open meetings law (AS 44.62.310 - 44.62.312) or an amendment to the extent that the provisions are consistent with the amendment proposed in sec. 1 of this resolution, notwithstanding art. II, secs. 6 and 12, Constitution of the State of Alaska. The amount of civil fines authorized by this amendment may be established by law.

(c) This amendment is not intended to prevent the free flow of ideas among legislators or their participation in public forums, community events, site visitations, or social events.

(d) In the preparation of its neutral summary under AS 15.58.-020(6)(C), the Legislative Affairs Agency shall consider the statement of legislative intent contained in (a) - (c) of this section.

* Sec. 3. The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

6-0013H
Bradley
3/28/89

Original sponsors: Sturgulewski, Fischer, Kerttula, et al.

IN THE SENATE

CS FOR SENATE JOINT RESOLUTION NO. 1 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

Proposing an amendment to the Constitution of the State of Alaska relating to open meetings.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. Article I, Constitution of the State of Alaska, is amended by adding a new section to read:

SECTION 24. MEETINGS OPEN. (a) Except as provided in (b) and (e) of this section, private and substantive discussions or debates on legislation under its jurisdiction by a quorum of a house of the legislature or of a committee or subcommittee of the legislature are prohibited.

(b) The legislature or a committee or a subcommittee of the legislature may meet in executive sessions authorized by law.

(c) A court may not prescribe rules or procedures for the conduct of legislative business or invalidate legislation because of a violation of this section.

(d) A court may impose a civil fine upon a member of the legislature for an intentional violation of this section and may impose other sanctions authorized by law.

(e) This section does not restrict discussion between two legislators.

(f) The legislature may implement this section.

* Sec. 2. INTENT. (a) The purpose of the amendment to art. I, Constitution of the State of Alaska, proposed in sec. 1 of this resolution is to make openness in government the rule and secrecy the exception. The

amendment ensures that the public is not excluded during the substantive deliberative and decision-making stages of the budgetary and lawmaking process.

(b) This amendment provides a basis for judicial enforcement of the existing open meetings law (AS 44.62.310 - 44.62.312) or an amendment to the extent that the provisions are consistent with the amendment proposed in sec. 1 of this resolution, notwithstanding art. II, secs. 6 and 12, Constitution of the State of Alaska. The amount of civil fines authorized by this amendment may be established by law.

(c) This amendment is not intended to prevent the free flow of ideas among legislators or their participation in public forums, community events, site visitations, or social events or to restrict discussions between two legislators who constitute a quorum of a committee or subcommittee, whether or not they are in attendance at a properly-called meeting of the subcommittee.

(d) In the preparation of its neutral summary under AS 15.58.-020(6)(C), the Legislative Affairs Agency shall consider the statement of legislative intent contained in (a) - (c) of this section.

* Sec. . The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

SJR 3

Offered: 3/20/89 6-0316E
Referred: Judiciary

Original sponsors: Coghill, Kelly,
Kerttula, et al.

IN THE SENATE BY THE STATE AFFAIRS COMMITTEE

CS FOR SENATE JOINT RESOLUTION NO. 3 (~~State Affairs~~ Jud)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

Proposing an amendment to the Constitution of the State of Alaska relating to repeal of regulations by the legislature.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. Article II, Constitution of the State of Alaska, is amended by adding a new section to read:

SECTION 22. REPEAL OF REGULATIONS. The legislature may repeal a regulation adopted by a state department or agency when ~~the legislature believes that~~ the regulation does not reflect the intent of the law. The repeal of the regulation is effective thirty days after the passage of a joint resolution by a majority vote of the membership of each house unless the joint resolution specifies a different effective date.

* Sec. 2. LEGISLATIVE INTENT. (a) The legislature in proposing this constitutional amendment to the people is seeking the ability to repeal, by joint resolution, administrative regulations that do not reflect the intent of the legislature. Administrative regulations are adopted by the state administration to implement laws passed by the legislature by at least a majority vote. Under the existing provisions of the state constitution, if the legislature believes that the regulation does not properly implement the legislative intent, the legislature can overturn the regulation only by passing a bill. Each bill passed by the legislature is subject to veto by the chief administrator, who is the governor. When a bill other than an appropriation bill is vetoed, the legislature may override that veto only

during a joint session of both legislative houses by an affirmative vote of two-thirds of the membership. The difficulty in achieving the necessary two-thirds veto override vote in opposition to the governor and the governor's administration, the expense of special legislative sessions to address vetoes that occur after the adjournment of regular legislative sessions, and the force of law that regulations enjoy, have resulted in adverse effects on the public and thus have led the legislature to propose this amendment.

(b) In the preparation of its neutral summary under AS 15.58.020 (6)(C), the Legislative Affairs Agency shall consider the statement of legislative intent contained in (a) of this section.

(c) In the preparation of the true and impartial summary of the amendment under AS 15.50.020, the lieutenant governor or the director of elections shall consider the statement of legislative intent contained in (a) of this section.

* Sec. 3. The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

PUBLISH DATE: 3/20/89

FISCAL NOTE

REQUEST:

Revision Date: 3-14-89
Title: Repeal of regulations by the legislature.
Sponsor: Coghill
Requestor: Coghill

Agency Affected: Office of the Governor
BRU: Division of Elections
Components: II-Elections Primary & General Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	-0-	-0-	2.2*	-0-	-0-	-0-
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	2.2*	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	2.2*	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	2.2*	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

* Costs included cover 2 to 3 pages in each Official Election Pamphlet for printing and typesetting, and costs estimated to cover computer programing requirements for vote (Continued)

Prepared by: Linda Edgeworth Phone: 465-4611
Division: Elections Date:

Approved by Commissioner: Sandra A Stuart Date: 3/14/89
Agency: Division of Elections /

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

counting purposes. However, these costs are based on the assumption that all candidates and issues will fit on three ballot cards, which is the norm. It should be noted, however that should the inclusion of this issue require a 4th ballot to be printed, the cost increase would have to be calculated at 16 cents per ballot x approximately 320,000 voters. The total cost of printing the additional ballot card would be $51.2.

Under these circumstances the fiscal note would be:

53.4

Alaska State Legislature

SENATE

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

To: Senator Jan Faiks
Senate Judiciary Committee Chairperson

From: Senator Jack Coghill

Re: CS for SJR 3; Legislative Repeal of Administrative Regulations

Date: March 22, 1989

Please schedule SC for SJR 3 for committee hearing as soon as possible. I would like to see this bill move through the House this session.

Attached you will find the back up information I supplied the Senate State Affairs Committee. This information still applies to the CS, which I support. The brevity of the State Affairs CS is an improvement.

Additionally, you will find attached a memo to a Mr. Bill Cotten from the DADS AGAINST DISCRIMINATION (D.A.D.) group. This memo is another example of regulations going beyond the law.

One further example which we have been made aware of by D.A.D. is found in AS 47.23.065, Waiver of Child Support, and the implementing regulations found at 15 AAC 147.120. The Statute is very broad, the regulations extremely narrow, and the result is the legislated policy has been negated.

Thank you for your prompt consideration.

Senator John B. (Jack) Coghill

Alaska State Legislature

Box V
Juneau, Alaska 99811
(907) 465 4797

Box 55028
North Pole, Alaska 99705
(907) 488 0862

MEMORANDUM

To: Senator Pat Pourchot
Senate State Affairs Committee, Chair; and
Senate State Affairs Committee Members

From: Senator Jack Coghill

Re: Backup for SJR 3; Legislative Repeal of Administrative Regulations.

Date: March 14, 1989

Intent: The intent of this proposed amendment to the Constitution of the State of Alaska, is to provide a mechanism for the legislature, as representatives of the people from which we derive our legislative authority, to oversee the rule making power granted the executive branch as a result of enacted legislation.

Background: This proposal has been placed on the ballot on three previous occasions. Each time it failed. The following chart is provided for your consideration.

	1980	1982	1984	1986	1988
Yea's	58,808	N/A	91,174	65,176	N/A
Nay's	82,010	N/A	98,856	94,299	N/A
Total Proposition Votes	140,818	N/A	190,030	159,475	N/A
Total Election Vote Cast	162,653	199,358	213,173	182,526	203,433
Total Reg. Voters	258,742	266,224	305,262	292,274	292,441
Proposition Failure %	16.0%	N/A	4.0%	18.2%	N/A
% Voter Turn Out	63%	75%	70%	62%	70%

From this chart it is interesting to note the difference between the total number of votes cast on the proposition and the total number of votes cast in the election. For 1980 this number is 21,835; for 1984 it is 23,147; and for 1986 the difference is 23,143. It appears that each time this ballot measure has been brought up, between 11 percent (1984) an 13 percent (1980 and 1986) of the electorate did not know what they were voting for.

The Administration has always opposed this resolution. This is to be expected.

Attachments

1. Ballot Proposition No. 1, 1980.

2. Ballot Proposition No. 1, 1984.

3. Ballot Proposition No. 2, 1986.

4. Letter from the Department of Law,
to Representative M. Mike Miller, Dated May 8, 1986.

Rational: I have resurrected this issue of legislative oversight of the policy setting ability of the executive branch, because the Constitution established the Legislature as the policy branch of government.

We have seen increasing numbers of administrative regulations promulgated to implement legislative policy, as established in the legislation we pass, that either ignores the legislative directive or goes beyond the limits of what the Legislature intended.

As an example, in 1985 the Legislature passed a bill that allowed "work commitments" on certain oil and gas leases to be extended by the Department of Natural Resources. The bill was half a page long and very direct. The intent as I recall was to retain the nearly 30% royalty rate that would result from production on these lease and to give the lease holder relief from the crashing oil market. The DNR wrote 14 pages of regulations to implement this policy. The result was that the lease holder lost his leases, the state put them up in another lease sale, and the leases were sold at 12 3/4 percent royalty.

Another example is the regulations established by the State Board of Dental Examiners regarding licensure of new dentists by credentials. It is obvious that the intent of the Statute (AS 08.36.234) was to allow the Board to establish criteria where dentists could gain access to Alaska patients based on their track record in other states. The Board simple wrote a regulation prohibiting licensure by credential. And to further exemplify the need for this resolution, the proposal to change this situation, SB 126, is a one word

change, from "may" to "shall". The bill was introduced on 1/18/89 and is still in the first committee of referral. You might think this is a simple policy change, however, in public hearings we have learned that this is substantial. The Board should promulgate regulations that address the intent of the law, and not the purview of the Board.

There are other examples from resource industries, and labor training programs to motor vehicle regulations. The broader issue however, and the complaint I receive most from my constituents, is that it is becoming increasing evident that administrative agencies are using regulations to perpetuate their bureaucratic empires. The problem is that this was never intended by the Constitution.

Recommendation: I recommend you move the SJR 3 from committee, with "do pass" recommendations.

BALLOT PROPOSITION NO. 1

LEGISLATIVE ANNULMENT OF REGULATIONS
Constitutional Amendment

(Committee Substitute for House Joint Resolution No. 82 Amended)

SUMMARY

(As it will appear on the November 4, 1980 General Election Ballot)

This proposal would permit the legislature to annul, by adopting a resolution, regulations adopted by state agencies. Annulment of regulations by resolution was authorized by the First State Legislature in 1959; however, in 1980 the Alaska Supreme Court held that the constitution permits the legislature to annul a regulation only by passing a bill, which requires three readings of the bill and a roll call vote which is recorded. The procedures for adopting resolutions are governed by legislative rules and require only the approval of the resolution by voice vote of a majority of both houses. A bill passed by the legislature annulling a regulation could be vetoed by the governor or repealed by referendum. A resolution annulling a regulation could not.

BALLOT FORM:

A vote "FOR" adopts the amendment.
A vote "AGAINST" rejects the amendment.

FOR ☐
AGAINST ☐

VOTE CAST BY MEMBERS OF 11TH STATE LEGISLATURE ON FINAL PASSAGE

Senate	(20 members):	Yeas 18	Nays 0	Absent or Not Voting 2
House	(40 members):	Yeas 36	Nays 0	Absent or Not Voting 4

LEGISLATIVE AFFAIRS AGENCY SUMMARY

(As required by law)

This proposal would add a new section, section 22, to Article II of the state constitution. If adopted, the proposal would authorize the legislature to annul or set aside a regulation which has been adopted by a state department or agency. In order to annul a regulation, the legislature could adopt a concurrent resolution by approval of the resolution by majority vote of the membership of each house of the legislature. The resolution specifies the date on which the annulment of a regulation would take effect.

FULL TEXT OF PROPOSED CONSTITUTIONAL AMENDMENT

SECTION 22. ANNULMENT OF REGULATIONS. The legislature by a concurrent resolution approved by a majority vote of the membership of each house may annul a regulation adopted by a state department or agency. The annulment of the regulation is effective on the date the concurrent resolution is approved by both houses unless the concurrent resolution specifies a different date.

STATEMENT IN FAVOR OF BALLOT PROPOSITION NO. 1

The legislature, when it writes a law, cannot foresee all of the possible details involved in carrying it out. The appropriate administrative agency is therefore allowed to write regulations which spell out who does what, when, where, and how. If the agency does no more than this no problem is created.

Unfortunately agency regulations are not always consistent with the intent the legislature had in passing the law. Sometimes an agency will get carried away and put out regulations that cause an unnecessary burden for the citizens. The First State Legislature realized this and provided a simple solution. The legislature could, by a concurrent resolution passed by a majority of each house, annul an administrative regulation. Such a resolution is not subject to the governor's veto.

The Alaska Supreme Court recently held, in a 3-2 decision, that the legislature must use a bill rather than a resolution to annul administrative regulations. But a bill is subject to the governor's veto. The governor can hardly be expected to approve a bill overruling his subordinates, who put out the regulation in the first place. The present governor has already vetoed one such bill.

The court ruling gives agency regulations equal standing with laws, *even though no single person elected by the voters has approved them.*

Our government is wisely based on dividing power among the three branches: legislative, executive and judicial. The current situation gives entirely too much power to the executive branch. Your approval of this constitutional amendment will restore the better balance under which the state operated from 1961 to 1980.

— **Charles H. Parr**
Chairman, House Judiciary Committee
Alaska State Legislature

STATEMENT AGAINST BALLOT PROPOSITION NO. 1

This is still another proposal by the legislature to free itself from the checks and balances of our constitution. Under the constitution, the legislature has all the power it needs to make laws and annul administrative regulations. This proposal does not aid the public in any way. What it does is allow the legislature to exercise its power to annul regulations in disregard of the constitutional requirements that each bill have a single subject, that each bill have three readings in each house, and that there be a recorded vote of the ayes and nays on final passage. It would also free the legislature from the executive veto and it would allow it to ignore the prohibition against special and local legislation.

The Alaska Supreme Court has recently ruled that the legislature must abide by the constitution's checks and balances on its power whenever it exercises that power, including when it acts to annul regulations. This amendment is intended to overrule the court's decision and erode the constitution's safeguards. It aids legislators, not the public, and it should be rejected.

— **Katherine D. Nordale**
Delegate to the Alaska
Constitutional Convention,
1955-1956

Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency.

BALLOT MEASURE NO. 1

Constitutional Amendment

LEGISLATIVE ANNULMENT OF ADMINISTRATIVE REGULATIONS

(1983 Legislative Resolve No. 15 (SCS HJR 5[Jud]))

SUMMARY

(As it will appear on the November 6, 1984 General Election Ballot)

This amendment of the Alaska Constitution would permit the legislature to annul executive-branch regulations by passing a resolution. The annulment would become effective 30 days after passage by the legislature, unless the resolution sets a different date. The resolution must have three readings in each house on separate days, except that it may be advanced from second to third reading on the same day by a three-fourths vote of the house considering it. The resolution must receive approval of a majority of the membership of each house. The yeas and nays on final passage must be entered in the legislative journals. The resolution is not subject to veto by the governor, and it is not subject to repeal by referendum.

BALLOT FORM:

A vote "FOR" adopts the amendment.
A vote "AGAINST" rejects the amendment.

FOR ☐
AGAINST ☐

VOTES CAST BY MEMBERS OF THE 13TH STATE LEGISLATURE ON FINAL PASSAGE

Senate	(20 members):	Yeas **19**	Nays **0**	Absent or Not Voting **1**
House	(40 members):	Yeas **34**	Nays **2**	Absent or Not Voting **4**

LEGISLATIVE AFFAIRS AGENCY SUMMARY

(As required by law)

This proposal for a constitutional amendment would allow the legislature to annul a regulation adopted by a state department or agency by concurrent resolution. The annulment is effective thirty days after the date the concurrent resolution is approved by both houses unless the resolution specifies a different date. Adoption requires three readings in each house on three separate days except it may be advanced from second to third reading on the same day by concurrence of three fourths of the membership of the house considering it. Adoption requires approval by a majority vote of the membership of each house. The vote on final passage must be entered into the journal.

FULL TEXT OF PROPOSED CONSTITUTIONAL AMENDMENT

(This amendment would add the following section to article II of the Alaska Constitution.)

SECTION 22. **ANNULMENT OF REGULATIONS.** The legislature by concurrent resolution may annul a regulation adopted by a state department or agency. The annulment of the regulation is effective thirty days after the date the concurrent resolution is approved by both houses unless the concurrent resolution specifies a different date. The concurrent resolution requires three readings in each house on three separate days, except that it may be advanced from second to third reading on the same day by concurrence of three-fourths of the house considering it, and approval by a majority vote of the membership of each house. The yeas and nays on final passage shall be entered into the journal.

STATEMENT IN FAVOR OF BALLOT MEASURE NO. 1

Voters who have ever experienced irritation or anger as a result of a problem they have had with state regulations should vote in favor of Ballot Measure No. 1. While many regulations do conform to and support state laws, there are occasionally regulations which are imposed that go beyond the intent of the law and cause undue hardship on our citizens. These regulations often make no sense at all, state agency people are often at a loss to explain the meaning or sense of the regulations, and yet the state agencies involved continue to enforce them, and voters are powerless to change them.

The Alaska Constitution, patterned essentially upon the Constitution of the United States and the experience of the other states, provides a system of checks and balances among the three branches of government, and further entitles the people to their own checks and balances through the voting booth, the initiative process, and final authority over amendments to the constitution. The one major area of government that is currently not directly accessible to the people's checks and balances is the very considerable volume of administrative regulations which are written by the state agencies in the executive branch of government.

These regulations deal with every aspect of government and our lives: fish and game, education, health and social services, traffic, land development, utilities, taxes; the list is endless. And once the regulations go into effect, they have all the force of law. The problem is, that unlike the situation that occurs with laws, the agency people who make and enforce regulations are not subject to voter approval at election time; they are either appointed by the governor or by his commissioners.

While the legislature is often made aware of foolish bureaucratic requirements by unhappy constituents, it is almost powerless to do anything about them. Currently, to annul a regulation, the legislature must pass a new bill which is then subject to veto by the governor. This puts the governor in the powerful position of being able to stop a bill that would overturn a regulation made by his own subordinates.

It was never intended by the framers of our State Constitution that any governmental body except the legislature have the power to make laws. Yet, bad regulations have been written, on occasion by state agencies, which go beyond the letter and intent of the law as passed by the legislature and in effect create law on their own.

This measure would provide a reasonable avenue for annulment of bad regulations. It would allow your elected representatives in the legislature, through a majority vote of both houses, to annul regulations in the same way they pass any legislative bill, except it would not be subject to veto by the governor, who clearly has a biased position in the matter.

The House Joint Resolution which created the ballot measure had bi-partisan sponsorship during the last legislative session, and was passed with near-unanimous support by both houses of the legislature.

—Mike Szymanski,
State Representative

STATEMENT OPPOSING BALLOT MEASURE NO. 1

This proposed amendment to the Alaska Constitution is very similar to the one proposed in 1980 and rejected by the voters 82,010 to 58,808. Although the present version includes some improvements over the 1980 version, it is another attempt by the legislature to concentrate governmental power in its own hands.

Under the current constitution and statutes, the legislature has all the power it needs to make laws and to limit or guide the adoption of administrative regulations. The regulations are adopted to implement statutes. This proposal would enable legislators to use a law-making procedure that is not subject to veto by the governor or repeal by referendum, and that could be used to ignore the prohibition against special and local legislation.

The constitution now provides for a balance of power among the legislative, executive, and judicial branches of the government. This balance requires a blending or sharing, as well as a dividing, of governmental responsibilities. If this constitutional amendment were to be approved by the voters, it would enable the legislature not only to write the laws, as has traditionally been the legislature's function, but it would also enable the legislature to act in place of the courts in deciding whether the executive has lawfully executed the laws when adopting a regulation; and it would empower the legislature to act in place of the executive by nullifying a specific executive-branch decision.

The annulment is like a repeal. In using this expedited procedure to annul a regulation, the legislature would act only in a negative way. It would not be providing the sort of policy guidance and direction that is appropriate to its law-making function. And it would not be providing the thoughtful analysis necessary to solve a problem. The legislature would be saying to the agency "your decision to adopt that regulation is wrong". But it would not be telling the agency what would be right. This is especially troublesome when dealing with a complex subject. Without any guidance beyond the statute that the executive branch agency was trying to implement in the first place, the agency is left with only the option to guess again. That is neither an efficient nor an appropriate way to run the government.

The Alaska Supreme Court has ruled that the legislature must abide by the Constitution's checks and balances on its power when it exercises that power, including when it acts to annul regulations. The present proposal is intended to overrule the court's decision. As argued four years ago, when the voters rejected the 1980 proposal, this amendment would aid legislators, not the public, and it should be rejected.

—Katherine D. Nordale,
Delegate to the Alaska Constitutional Convention, 1955-1956

BALLOT MEASURE NO. 2

Constitutional Amendment
Legislative Annulment of Administrative Regulations
(1986 Legislative Resolve No. 60 HCS SJR 40 [Jud] am H)

BALLOT LANGUAGE
(As it will appear on the November 4, 1986, General Election Ballot)

This amendment of the Alaska Constitution would permit the legislature to annul executive branch regulations by passing a resolution that is not subject to veto by the governor or repeal by referendum. The annulment would become effective 30 days after passage by the legislature, unless the resolution sets a different date. The resolution must have three readings in each house on separate days, except that it may be advanced from second to third reading on the same day by a three-fourths vote of the house considering it. The resolution must receive approval of a majority of the membership of each house. The yeas and nays on final passage must be entered in the legislative journals.

A vote "FOR" adopts the amendment. FOR ☐

A vote "AGAINST" rejects the amendment. AGAINST ☐

VOTES CAST BY MEMBERS OF THE 14TH ALASKA LEGISLATURE ON FINAL PASSAGE

House:	Yeas	31
	Nays	4
	Absent or Not Voting	5
Senate:	Yeas	17
	Nays	0
	Absent or Not Voting	3

LEGISLATIVE AFFAIRS AGENCY SUMMARY
(HCS SJR 40 (Jud) am H)

This proposal for a constitutional amendment would allow the legislature to annul a regulation adopted by a state department or agency by its adoption of a concurrent resolution. Under the present provisions of the constitution, the legislature may annul a regulation only by the enactment of a bill that is subject to the veto of the governor; if the governor vetoes the bill, the constitution now requires a two-thirds affirmative vote of the legislature assembled in joint session to override the veto.

If the legislature adopts a concurrent resolution to annul a regulation under the authority proposed here, the annulment would be effective thirty days after the date the concurrent resolution is approved by both houses unless the resolution specified a different date. The concurrent resolution would not be subject to the veto of the governor. Adoption would require three readings in each house on three separate days except that it may be advanced from second to third reading on the same day by the concurrence of three-fourths of the membership of the house considering it. Adoption would require approval by a majority vote of each membership of each house. The vote on final passage must be entered into the journal.

FULL TEXT OF PROPOSED CONSTITUTIONAL AMENDMENT

(This amendment would add the following section to article II of the Alaska Constitution.)

SECTION 22. ANNULMENT OF REGULATIONS. The legislature by concurrent resolution may annul a regulation adopted by a state department or agency. The annulment of the regulation is effective thirty days after the date the concurrent resolution is approved by both houses unless the concurrent resolution specifies a different date. The concurrent resolution requires three readings in each house on three separate days, except that it may be advanced from second to third reading on the same day by concurrence of three-fourths of the house considering it, and approval by a majority vote of the membership of each house. The yeas and nays on final passage shall be entered into the journal.

BALLOT MEASURE NO. 2

STATEMENT IN SUPPORT OF BALLOT MEASURE NO. 2

The issue is basically simple: should bureaucrats or the Legislature be the ultimate lawmaking authority?

All 60 members of the Legislature (40 House and 20 Senate) are elected by the people. They are all voted into, and out of, office by individual voters. The Alaska Constitution says, "The legislative (i.e., lawmaking) power of the State is vested in a Legislature consisting of a Senate...and a House of Representatives..." The Legislature proposes, considers, and enacts laws, known collectively as the Alaska Statutes (if general and permanent) or as the Session Laws of Alaska (if specific and temporary).

All bureaucrats who promulgate (i.e., enact and enforce) regulations (theoretically, to put laws into effect) are in the Executive Branch, headed by the Governor. Bureaucrats are not voted into office and thus cannot be removed by the people. Instead, bureaucrats are hired by the Governor or by his/her appointees, and thus can only be removed from office by the Governor or by somebody answerable to him/her. However, the regulations promulgated by the bureaucrats, known collectively as the Alaska Administrative Code, have the force of law and affect all of us, sometimes adversely.

What can be done about a law that's bad? It can be repealed by the Legislature or, in some cases, by the people directly via an initiative petition.

What about a regulation that's bad? It can only be repealed by the bureaucrats who promulgated it, up to and including the Governor. If the Legislature tries to repeal a regulation by passing a bill, the Governor will almost certainly (and always has, in the past) veto the bill so that the bad regulation stays in full force and effect.

Now, if the Legislature had the power to repeal regulations by passing a concurrent resolution (instead of a bill), then the resolution could not be vetoed by the Governor. Thus, the Legislature would be able to get rid of bad regulations, which in effect it cannot do now.

Would this give the Legislature too much power? Not hardly. Since the Legislature already has full power to enact laws, why shouldn't it have full power to repeal all laws, including regulations?

Why do Governors and bureaucrats oppose giving the Legislature such regulatory repeal power? Because Governors and their handpicked bureaucrats, which are answerable only to the Governor (and cannot be removed by the people, which can remove Legislators), don't want to lose the power they now have to promulgate and enforce any regulation they want. It's that simple.

If you feel that the Legislature should have the power to repeal regulations via concurrent resolution (not vetoable by the Governor), vote FOR the ballot measure. If you feel that bureaucrats should be the ultimate lawmaking authority, vote otherwise.

I recommend that you vote FOR. Only in this way will we realistically be able to get rid of bad regulations.

Andre Marrou
State Representative

STATEMENT OPPOSING BALLOT MEASURE NO. 2

For the third time in six years, the legislature insists on confronting the voters with a proposed constitutional amendment giving the legislature a short-cut to law-making—another attempt by the legislature to concentrate governmental power in its own hands. The voters rejected a similar proposal in 1980 and the identical proposal in 1984. It should be rejected again.

Under the current constitution and statutes, the legislature has all the power it needs to make laws and to limit or guide the adoption of administrative regulations. Regulations are adopted to implement statutes. They have the force of law. Annulling them changes the law. This proposal would enable legislators to use a law-making procedure that is not subject to veto by the governor or repeal by referendum, and that would be used to ignore the prohibition against special and local legislation.

The constitution now provides for a balance of power between the legislative, executive, and judicial branches of the government. This balance requires a blending or sharing, as well as a dividing, of governmental responsibilities. If this constitutional amendment were to be approved by the voters, it would enable the legislature not only to write the laws, as has traditionally been the legislature's function, but it would also enable the legislature to act in place of the courts in deciding whether the executive has lawfully executed the laws when adopting a regulation, and it would empower the legislature to act in place of the executive by reversing a specific executive-branch decision.

In its intent statement accompanying this proposal, the legislature admitted that the "difficulty in achieving [the two-thirds] majority [to override a veto] in opposition to the governor and the governor's administration has led the legislature to propose this amendment." In other words, the fear that the governor might veto a bill and that not enough legislators would agree to override that veto prompted this short-cut approach to law-making. That fear overlooks the governor's accountability to the voters throughout the state.

The annulment is like a repeal. The legislature would act only in a negative way. It would not be providing the sort of policy guidance and direction that is appropriate to its law-making function. The legislature would be saying to the agency "your decision to adopt that regulation is wrong." But it would not be telling the agency what would be right. This is especially troublesome when dealing with a complex subject. Without any guidance beyond the statute that the executive-branch agency was trying to implement in the first place, the agency is left with only the option to guess again. That is neither an efficient nor appropriate way to run the government.

The Alaska Supreme Court has ruled that the legislature must abide by the constitution's checks and balances on its power, including when it acts to annul regulations. The present proposal is intended to overrule the court's decision. As mentioned when the voters rejected the 1980 and 1984 proposals, this amendment would aid legislators, not the public, and it should be rejected.

Katherine D. Nordale
Delegate to the Alaska
Constitutional Convention, 1955—1956

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

May 8, 1986

Honorable M. Mike Miller
Chairman
House Judiciary Committee
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Re: SJR 40 (constitutional amendment on annulment of regulations)
Our file: 66-3-86-0493

Dear Representative Miller:

I understand that Senate Joint Resolution No. 40, proposing an amendment to the Alaska Constitution, is on your committee's agenda for tomorrow. This letter is to express the Department of Law's opposition to that resolution. If the resolution is passed, that proposed amendment would hit the voters for the third time in six years.

BRIEF STATEMENT

Essentially, the Department of Law's position is that:

1. In 1980, the voters rejected a virtually identical constitutional amendment by a substantial margin -- 82,010 to 58,808. In 1984, they even rejected an improved version (improved in terms of accountability to the public). We should assume that the voters knew what they were doing.

2. The legislature does not need this shortcut method to perform its proper oversight function.

(A) The Alaska Administrative Procedure Act includes provisions giving multiple notice to the legislature and enabling legislators to participate in the regulations-adoption process.

(B) If an executive-branch agency, in adopting a regulation, goes in a direction that is not supported by the current legislature, the legislature may legislate further -- enact guidelines,

limitations, prohibitions.

3. A concurrent resolution, the vehicle proposed by this resolution to annul administrative regulations, is not covered by the constitutional and other provisions applicable to bills, which provisions tend to assure protection of and accountability to the public.

4. An annulment resolution's bare negative statement does not afford the executive-branch agency responsible for executing the law any guidance in performing its constitutionally mandated duties.

DISCUSSION

The amendment proposed by SJR 40 is virtually identical to the Eleventh Legislature's CSHJR 82 am (1980 Legislative Resolve No. 5). That amendment was rejected by the voters on November 4, 1980 by a vote of 82,010 to 58,808. That is a substantial margin, and we should assume that the voters knew what they were doing. They again rejected the amendment in 1984 -- in the form of the Thirteenth Legislature's SCS HJR 5(Jud) (1983 Legislative Resolve No. 15) -- even though it contained provisions for a deferred effective date, three readings on separate days, and recording in the journal the yeas and nays on final passage. The voters should not be repeatedly subjected to the same ballot issue.

As you know, these proposals for constitutional amendments are intended to reverse the effect of the Alaska Supreme Court's decision in State of Alaska v. A.L.I.V.E. Voluntary, 606 P.2d 769 (1980). The essence of that court decision, which held invalid the statute (AS 44.62.320(a)) that provided for legislative annulment of administrative regulations by concurrent resolution, is that (1) procedurally and substantively valid regulations have the force of law, (2) an "annulment" of a regulation has the effect of changing the law, and (3) when the legislature changes the law, it must do so by following the constitutional procedures for law-making. Since AS 44.62.320(a)'s concurrent resolutions did not follow the procedures for law-making, the court held that that statute was invalid.

As the court pointed out in Plumley v. Hale, 594 P.2d 497, 500 (Alaska 1979), the various constitutional provisions specifying the mechanics of legislating are "designed to engender a responsible legislative process worthy of the public trust." Those provisions are "to ensure deliberation prior to passage, to ensure that the requisite majority of each house affirmatively

votes to enact a bill into law, and to provide a public record of the vote cast by each legislator." Id. Those procedures include, for example

-- the single subject rule of art. II, sec. 13;

-- the descriptive title rule of art. II, sec. 13;

-- the requirement of separate readings on separate days, under art. II, sec. 14;

-- the requirement that the ayes and nays on final passage be recorded in the legislative journal, under art. II, sec. 14;

-- the provisions on gubernatorial veto, under art. II, secs. 15 and 16; and

-- the deferred effective date, under art. II, sec. 18.

Those provisions provide for public accountability, public notice, and an opportunity for the public to prepare for the application of new law. Regulations adopted under the Alaska Administrative Procedure Act take effect only after the required public notice, opportunity for public comment, legal review by the Department of Law, and a deferred effective date. Curiously, the current version of this proposed constitutional amendment omits the improvements contained in 1983 LR 15. Neither the constitutional protections nor the corresponding Administrative Procedure Act protections would be applicable to a concurrent resolution's annulment of an administrative regulation.

The proposed constitutional amendment before you is not a "mere adjustment" or technical correction of the constitution. It proposes a substantial realignment of the constitutionally specified powers. Although the adoption of administrative regulations by an administrative agency is considered a "quasi-legislative function," it is an essential part of the executive branch's execution or implementation of a statute. The proposed amendment, by providing for legislative annulment by means of a concurrent resolution, provides for the legislature to make what can be considered executive-branch decisions -- executing a program created by statute. This concentration of power in the legislative branch -- both enacting the program statute and then participating in executing it -- does not reflect a sound policy in the face of the separation-of-powers doctrine as expressed in the Federalist Papers and other writings. That doctrine, of

course, involves a blending or sharing of powers. The purpose is to avoid an inappropriate concentration of power.

In addition, when the legislature makes a simple negative statement by merely annulling a regulation, it interferes with the executive-branch's execution of the statute and offers nothing in its place. For example, the regulation involved in the A.L.I.V.E. Voluntary case was a Department of Revenue regulation dealing with permits for such things as lotteries. It contained several elements: a dollar limitation, a time limitation, and a provision for the cumulative effect of the value of individual prizes in reaching the dollar limitation. When the legislature annuls a provision such as that, is the agency to interpret the annulment as meaning that the dollar limitation is not appropriate, or that the time period is not appropriate, or that the cumulative effect is not appropriate? If the agency concluded that the legislature must have been primarily concerned about the dollar limitation, and adopted a new regulation specifying a different dollar amount, would it be guessing right?

I do not believe that anyone questions the legislature's right to review the executive-branch's execution of the statutes. Nor does anyone question the legislature's right to enact statutes setting guidelines and imposing limitations or prohibitions. We may disagree as to the merit of a particular guideline or prohibition, but not as to the right of the legislature to enact it (subject, in some circumstances, to the applicability of other constitutional provisions).

The Alaska Administrative Procedure Act (AS 44.62) provides a carefully structured system with many opportunities for legislator involvement in the adoption of administrative regulations. If one of those opportunities was missed, or proved otherwise unavailing in some circumstance, further legislation might be appropriate. Such legislation would, of course, supersede the offending regulation.

In Immigration and Naturalization Service v. Chadha, 462 U.S. 919, 77 L.Ed.2d 317, 103 S.Ct. 2764 (1983), affirming Chadha v. Immigration and Naturalization Service, 634 F.2d 408 (9th Cir. 1980), the United States Supreme Court held invalid what has become known as the "legislative veto." The U.S. Supreme Court's decision is consistent with our state supreme court's decision in A.L.I.V.E. Voluntary. Your committee might also find helpful the discussion in the official commentary to the 1981 Revised Model State Administrative Procedure Act, promulgated by the National Conference of Commissioners on Uniform State laws; see, especially, the art. III introductory comments

which discuss the legislative/executive/public interrelationship regarding administrative regulations.

In a nutshell, the problem is that once the legislature passes a statute creating a program or function it is then up to the executive to execute that statute and up to the court system to determine whether the executive has exceeded its authority or otherwise violated the law. This proposed amendment would alter that balance by injecting the legislature into the execution stage of the system.

As the voters have done twice before, your committee should reject this proposed constitutional amendment.

Thank you for this opportunity to comment. I would be happy to discuss the matter further with you at your convenience.

Yours truly,

HAROLD M. BROWN
ATTORNEY GENERAL

By: Art Peterson
Arthur H. Peterson
Assistant Attorney General

AHP:md

cc: Hon. Paul Fischer
Alaska State Senate

Jim Ayers, Director
Legislative Relations
Governor's Office

STATE OF ALASKA

THE LEGISLATURE

1983

Source

SCS HJR 5(Jud)

Legislative Resolve No.

15

Proposing an amendment to the Constitution of the State of Alaska relating to annulment of regulations by the legislature.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. Article II, Constitution of the State of Alaska, is amended by adding a new section to read:

SECTION 22. ANNULMENT OF REGULATIONS. The legislature by concurrent resolution may annul a regulation adopted by a state department or agency. The annulment of the regulation is effective thirty days after the date the concurrent resolution is approved by both houses unless the concurrent resolution specifies a different date. The concurrent resolution requires three readings in each house on three separate days, except that it may be advanced from second to third reading on the same day by concurrence of three-fourths of the house considering it, and approval by a majority vote of the membership of each house. The yeas and nays on final passage shall be entered into the journal.

* Sec. 2. The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

Rejected by voters
98,856 to 91,174.

March 22, 1989

TO: Mr. Bill Cotten, Esq.
Members of the Civil Rule 90.3
Review Committee

FROM: DADS AGAINST DISCRIMINATION

SUBJ: Civil Rule 90.3 and its Companion Administrative Regulation of 15 AAC 147.010 are Violative of Alaska State Statutes

DADS AGAINST DISCRIMINATION believes that both Civil Rule 90.3 Child Support Awards and 15 AAC 147.010 Determination of Support Obligation are violative of Alaska Statutes set forth below.

Civil Rule 90.3 and 15 AAC 147.010 are obligor income-based standards, which establish a child support award solely on the basis of the obligor's (or noncustodial parent's) adjusted gross income, irrespective of the obligee custodian's assets and income, in all cases where sole custody rests in one of the two parents.

Civil Rule 90.3 makes provision for consideration of obligee custodian income in shared custody cases. Also, under Section (c) Exceptions of 90.3, where "unusual circumstances" exist, the rule directs that the custodial parent's income shall be considered. These are the only two exceptions to the obligor income-basis for the rule. The majority of custody awards in Alaska vest sole custody in one parent. In the majority of child support awards established under Civil Rule 90.3, no consideration is allowed of the custodial parents income or assets, in violation of the Alaska Statutes set forth herein.

15 AAC 147.010 however makes absolutely no provision for consideration of obligee assets or income, throughout the regulation. In fact, the following language appears in Section (c):

> The amount of child support obligation determined under (b) of this section will be the amount that is just and proper for the obligor to contribute toward the nurture of the child. (emphasis supplied)

Alaska Statutes in at least the four instances cited below make clear that legislative intent in the establishment of child support awards requires a specific evaluation of the assets and income of both parents.

AS 25.24.160. Judgment. In a judgment in an action for divorce or action declaring a marriage void or at any time after judgment, the court may provide: ...(2) for the payment by either or both parties of an amount of money or good, in gross or installments, as may be just and proper for the parties to contribute toward the nurture and education of their children... (emphasis supplied)

In AS 25.24.230. Judgment, at Section (a)(2), the court must make a finding that: the agreements between the spouses concerning child custody, child support, visitation... division of property, and allocation of obligations are not grossly unfair, unjust, or inequitable...(emphasis supplied)

In AS 47.23.060. Order of support, in Section (a), the Legislature has directed that: ...The court shall carefully consider the need for support, the ability of both parents to meet such support obligations, the extent to which the parents supported the child before divorce, and the economic ability of the parents to pay after separation and divorce...(emphasis supplied)

In AS 47.23.170. Administrative establishment of support obligations; hearing., at Section (e)(3), the Legislature states clearly its intent with regard to both parents duty of support:

> (e) The hearing officer shall consider the following in making a determination under (d) of this section:
> (3) the intent of the legislature that children be supported as much as possible by their natural parents;...(emphasis supplied).

It is absolutely clear that the Alaska Legislature has established in state statute the fundamental policy that both parents owe a duty of support and that the assets and income of both parents be carefully compared in setting a child support award.

It should be noted that not all child support cases which are administratively established by Child Support Enforcement Division are AFDC cases. Where a child is born out of wedlock or the Court has failed to enter a child support award in a divorce decree, CSED may establish a child support award administratively. Also, new federal law adopted in the Family Support Act of 1988, will require CSED to modify every judicial and administrative order of child support for its 26,000 cases, based upon the regulation 15 AAC 147.010. Its violation of Alaska Statutes cannot be ignored, because thousands of Alaskan men, women and children will be affected.

This Committee must start over, from scratch, and write a new child support award guideline that does not violate Alaska law. This new child support award guideline must require the evaluation of the assets and income of both parents!

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

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March 28, 1989

The Honorable Jan Faiks, Chair
Senate Judiciary Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: SJR 3, repeal of regulations by legislature

Dear Senator Faiks:

SJR 3, proposing a constitutional amendment authorizing legislative repeal of administrative regulations, appears on your committee's agenda for today. For the record, this letter briefly expresses the Department of Law's opposition to that resolution.

First, this resolution would present essentially the same question to the voters for the fourth time in 10 years (1980, 1984, 1986, and 1990). The voters rejected the idea three times already. Changing "annul" to read "repeal," as this resolution does, is not likely to change their minds. We recommend that the decision of the voters, given and reaffirmed recently, be accepted.

Second, the legislature does not need this shortcut method to perform its proper oversight function. We recommend reliance on current statutory and constitutional procedures.

Third, the State Affairs Committee substitute deletes some of the original resolution's protections, relying on the Uniform Rules of the Alaska State Legislature in its provisions on handling resolutions. Whatever the probability of changing the Uniform Rules, having the accountability provisions spelled out in the constitution provides greater assurance to the public.

Fourth, a simple repeal of a regulation, by the legislature, does not provide the responsible executive-branch agency

sufficient direction as to statutory policy or legislative intent. Such a repeal is not an efficient management tool.

Thank you for this opportunity to comment.

Yours truly,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: Arthur H. Peterson
Arthur H. Peterson
Assistant Attorney General
Legislation/Regulations Section

AHP:cb

cc: Honorable Jack Coghill
Alaska State Senate
P.O. Box V
Juneau, Alaska 99811

Robert A. Evans
Legislative Liaison
Office of the Governor

March 24, 1989

To: Administrative Regulation
Review Committee

Representative Peter Goll, Chairman
Senator Lloyd Jones, Vice Chairman
Senator Jack Coghill
Senator Paul Fischer
Representative Kay Wallis
Representative Alyce Hanley

Senator Tim Kelly
President of the Senate

Representative Sam Cotten
Speaker of the House of Representatives

From: DADS AGAINST DISCRIMINATION

Subject: Request for Review of Alaska Administrative Code Provisions in Chapter 147. Child Support Enforcement.

This memorandum confirms our telephone conversation with Chairman Goll of this date that DADS AGAINST DISCRIMINATION has requested administrative regulation review of the following three provisions of Chapter 147 Child Support Enforcement of the Alaska Administrative Code:

1. 15 AAC 147.010. Determination of Support Obligation. for its conformance to legislative intent established in AS 25.24.160(2), AS 25.24.230(a)(2), AS 47.23.060(a) and AS 47.23.170(e). DADS attaches a memo written to the Civil Rule 90.3 Committee which fully addresses our serious concern that 15 AAC 147.010 is strictly obligor income-based and is therefore violative especially of Title 47 statutes, which require a careful weighing of the assets and income of both parents in establishing a child support award.

2. 15 AAC 147.120. Waiver of Child Support. for its conformance with legislative intent established in AS 47.23.065. Here DADS believes the statute authorizes written waiver agreements signed by both parties, with the only statutory limitation being that the agreement to waive support must be adopted by administrative order to be effective while the obligee custodian receives public assistance. The regulation, however, severely restricts the availability of a waiver agreement to only obligors who are permanently disabled and receiving disability benefits, or are receiving public assistance.

3. 15 AAC 147.220. Release of Location of Child - Agency to Verify. for its conformance to legislative intent established in AS 47.23.275. Here DADS believes that the statute recognizes a visitation order from any state, but the regulation restricts recognition to only those instances where "visitation order has been entered by an Alaska court...".

SJR 4

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

STEVE COWPER, GOVERNOR

REPLY TO

☒ CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
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☐ OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

January 29, 1989

The Honorable Jan Faiks
Alaska State Senator
P.O. Box V
Juneau, Alaska 99811

Dear Senator Faiks:

Thank you for the opportunity to review SJR 4, relating to a proposed amendment to the constitutional right to bear arms in Alaska. After considerable research regarding the law in Alaska and other states on this issue, it is our opinion that the existing constitutional provision protecting the right to bear arms should not be, nor does it need to be, amended.

In summary, our analysis is:

1. In Alaska, the right of the people to bear arms for legitimate purposes has never been infringed. In the absence of a specific need to amend the constitution, it may be wise to follow the adage "If it ain't broke, don't fix it."

2. In a wide variety of contexts, the Alaska Supreme Court has interpreted individual rights under the state constitution more broadly than the federal constitution, and there is no reason to believe the court would not interpret the existing right to bear arms provision in an equally broad manner.